163 U.S. 142

TRANSCRIPT OF RECORD.

163-142

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 217.

THE ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. W. N. BUTLER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED FEBRUARY 21, 1893.

(15,265.)

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INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from circuit court of Alexander county	1	1
Petition for mandamus	1	1
Summons	7	4
Sheriff's return	8	5
Plea	8	5
Amendments to petition	9	6
Demurrer to amended petition	10	7
Answer	11	7
Pleas to answer	25	15
Motion to strike replication from files	26	15
Stipulation waiving jury, &c.	27	16
Demurrer to answer	28	17
Amended answer	29	18
Demurrer to answer	44	27
Replication	46	27
Order sustaining demurrer to petition, &c.	47	28
Order overruling demurrer to amended petition, &c.	48	29
Order taking motion to strike replication under advisement, &c.	48	29
Order granting change of venue, &c.	49	29

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	Original.	Print.
Order overruling demurrer to answer, &c.	49	30
Order sustaining special demurrer to answer, &c.	50	30
Findings	51	30
Judgment	53	32
Appeal to supreme court	54	32
Evidence for plaintiffs	54	33
Testimony of John H. Jones	54	33
Exhibit A (J. H. Jones)—Folder of the Illinois Central Railroad Company, dated December 20, 1891	84	49
Testimony of C. L. Hilleary	85	50
G. B. Ramsey	94	55
J. W. Wenger	103	60
G. W. Hatter	110	65
A. F. Taylor	122	72
G. W. Hatter (recalled)	130	76
John H. Jones (recalled)	134	78
N. W. Daily	139	83
G. O. Vincent	144	86
G. W. Hatter (recalled)	149	89
J. J. Lane	152	91
Plaintiffs rest	159	94
Evidence for defendant	159	94
Testimony of C. A. Beck	159	94
Admission as to testimony of J. G. Hartigan	171	102
Stipulation as to facts	171	102
Journal of house of representatives, 1879	173	104
Testimony of J. H. Jones (recalled)	178	106
Defendant rests	178	106
Evidence for plaintiffs in rebuttal	178	106
Testimony of A. F. Taylor (recalled)	178	106
Assignment of errors	180	107
Appeal bond	181	107
Clerk's certificate	182	107
Order taking motion for extension of time to file briefs under advisement	185	108
Order extending time to file reply brief for appellant	185	108
Order taking case under advisement	186	109
Opinion	186	109
Judgment	209	122
Order for stay	211	123
Order denying rehearing	212	123
Certificate of Federal question	213	124
Bond on writ of error	213½	125
Writ of error (copy)	215	126
Citations (copy)	219	127
Clerk's certificate	222	128
Writ of error (original)	223	128
Return on writ of error	224	129
Assignment of errors	225	130

a State of Illinois, Supreme Court, Central Grand Division, *ss:*

At a supreme court begun and held at Springfield, on the first Tuesday in the month of June, in the year of our Lord one thousand eight hundred and ninety-two, the same being the seventh day of June, in the year of our Lord one thousand eight hundred and ninety-two.

Present: Joseph M. Bailey, chief justice; David J. Baker, justice; Jacob W. Wilkin, justice; Alfred M. Craig, justice; John Scholfield, justice; Simeon P. Shope, justice; Benjamin D. Magruder, justice.

Be it remembered that on, to wit, 23rd day of May, in the year of our Lord one thousand eight hundred and ninety-two, a record was filed in my office, which is in words and figures following, to wit:

1 UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } *ss:*
Alexander County, }

Pleas before Honorable Oliver A. Harker, judge of the first judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Alexander county, in the State of Illinois, and at a regular term thereof, begun and held at the court-house, in the city of Cairo, in said county, on the second Monday (being the 11th day) of May, in the year of our Lord one thousand eight hundred and ninety-one, and the Independence of the United States the one hundred and fifteenth.

Present: The Hon. Oliver A. Harker, judge of the first judicial circuit of the State of Illinois, presiding; William N. Butler, State's attorney; John Hodges, sheriff; Edmund S. Dewey, clerk.

THE PEOPLE OF THE STATE OF ILLINOIS }
vs. } Petition for Mandamus.
ILLINOIS CENTRAL RAILROAD COMPANY. }

Be it remembered that on the 17th day of April, A. D. 1891, the petitioners, The People of the State of Illinois, by William N. Butler, State's attorney of Alexander county aforesaid, and by John H. Mulkey and Lansden & Leek, their counsel, filed in the office of the clerk of the circuit court of Alexander county their certain petition, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, } *ss:*
County of Alexander, }

In the Circuit Court, May Term, A. D. 1891.

2 To the Honorable Oliver A. Harker, judge of the circuit court within and for Alexander county and State of Illinois:

Your petitioners, The People of the State of Illinois, by William N. Butler, State's attorney within and for the said county of Alex-

ander and State of Illinois, complain of the Illinois Central Railroad Company, and for cause of complaint would respectfully show unto your honor that the said Illinois Central Railroad Company was incorporated by an act of the General Assembly of the State of Illinois approved February 10th, 1851, and that in and by said act of incorporation the said railroad company was authorized and empowered to locate and build a railroad, with one or more tracks, from the southern terminus of the Illinois and Michigan canal to a point at the city of Cairo, in the said Alexander county, with a branch of the same to the city of Chicago, on Lake Michigan, and also a branch via the city of Galena to a point on the Mississippi river opposite the city of Dubuque, in the State of Iowa.

Your petitioners further aver that the said railroad company, in pursuance of and in compliance with the terms of the grant so made to it by the State as aforesaid, located the line of its railroad and the branches thereof and built and completed its said railroad and the branches thereof before the expiration of

(Page 1)

the year 1855, and that in the location and building of said road in said city of Cairo said railroad company laid down its railroad track for the distance of two miles on the Ohio levee embankment and extended the same down to a point or place but little
3 over a quarter of a mile from the junction of the waters of the Ohio and Mississippi rivers, and there, on block one (1), in said city of Cairo, at the intersection of Second and Ohio Levee streets, in said city, the said railroad company located and established its passenger station and depot, and has there maintained and continuously used the same up to this time, namely, a period of thirty-six (36) years, and during all of that time said railroad company has not had or maintained for any length of time any other or different passenger station and depot in said city, and the said railroad company then and there made said passenger station so located at the intersection of the said Second and Ohio Levee streets, to which point it had laid down and extended its railroad track as aforesaid, the southern terminus of its said railroad, under and by virtue of its charter and act of incorporation aforesaid, and said point and place, at said station-house, in said city of Cairo, has ever since remained and now is the southern terminus of said railroad, and no other point or place in said city, county, or State has been at any time or for any purpose the southern terminus of said company's railroad.

And your petitioners further aver that the said railroad company has continuously and daily since

(Page 2)

the completion of its said railroad as aforesaid run and operated its said railroad and run and propelled by steam its cars, engines, and trains over its said roads, and on the southern division of its road in this State, namely, from Centralia to Cairo, a distance of one hundred and twelve (112) miles, it has, during all that time, except

until a few months ago, run and operated all its regular passenger trains to and from its passenger station in Cairo aforesaid, and thereby and in the general management and operation of said railroad or the southern division thereof the said railroad company has also made said station-house in said city of Cairo the southern terminus of its said railroad.

Your petitioners further aver that the said railroad company has built or caused to be built across the Ohio river, at a point or place two miles north of its said passenger station in Cairo, a railroad bridge to enable it to connect with other railroads south of the Ohio river, and that the foot of the Illinois approach to this railroad bridge is about one mile still further north and a mile and a quarter or two miles from the settled and occupied portions of the said city of Cairo.

Your petitioners further aver that the said railroad bridge was completed *to* the latter part of the year 1889, and that within a few months thereafter the said railroad company ceased to bring all of its regular passenger trains on the southern division of its road in this State as aforesaid into the said

(Page 3)

city of Cairo and to its passenger station aforesaid, but caused two of its regular passenger trains, namely, the south-bound and north-bound fast mail trains, as said company calls them, to pass through Cairo, or the upper part of the city, and on over said bridge going south and over said bridge and on through Cairo going north, without stopping at all or for any purpose; and although said company now runs its said north-bound fast mail train over said bridge and down to its said passenger station aforesaid, yet it still runs said south-bound fast mail train through the upper part of the city and over the said bridge and stops it at no point in Illinois within less than seven miles of the city of Cairo.

Your petitioners would further aver that the said city of Cairo was duly incorporated in the year 1887 by an act of the General Assembly of this State, and that in the year 1859, by virtue of an act of said General Assembly, it became the county-seat of said Alexander county, and it has ever since remained and is now the county-seat of said county, and that its population is between ten and eleven thousand, according to the census of the year 1890.

Your petitioners therefore respectfully submit and claim that under and by virtue of the statutes and common law of the State the said railroad company is required to run all of its regular passenger trains which come into Cairo down to the said passenger station aforesaid, and there to stop them a suffi-

(Page 4)

cient length of time to receive and let off passengers with safety; but the said railroad company, disregarding alike its statu-ory and common-law obligations and the repeated requests of citizens of the said city of Cairo, have not stopped and do not stop as aforesaid all its regular passenger trains which came into Cairo at the said passenger station on said block one (1) aforesaid, or at any other station or place in Cairo.

Wherefore your petitioners pray that the said Illinois Central Railroad Company may be summoned as required by law in such cases, and that it be required to answer all and singular the averments hereof, and that upon proof of the matters and things herein averred against it a preemptory writ of mandamus may be awarded unto your petitioners, ordering and commanding the said Illinois Central Railroad Company, its officers and agents, to cause all of its regular passenger trains hereafter coming into Cairo, and by whatever name, number, or designation they may be known or called, to be brought down to said passenger station at the intersection of Second and Ohio Levee streets, in said city of Cairo, and there stopped a sufficient length of time to receive and let off passengers with safety; and that your honor will make such other and further order as may be necessary to obtain from said railroad company a full compliance with requirements of the law concerning the matters whereof your petitioners herein

(Page 5)

complain; and, as in duty bound, your petitioners will ever pray, &c.

WM. N. BUTLER,
State's Attorney, Alexander County, Ill.

JOHN H. MULKEY AND
LANSDEN & LEEK,
Of Counsel.

STATE OF ILLINOIS, }
County of Alexander, } *ss:*

James S. Rearden, city comptroller of the city of Cairo, states on oath that he has read the foregoing petition and knows the content-thereof, and that the matters and things -herein stated are true, to the best of his knowledge and belief.

JAMES S. REARDEN.

Subscribed and sworn to before me this 17th day of April, 1891.

[SEAL.] M. J. HOWLEY,
Notary Public, Alexander County, Ill.

(Page 6)

And on the day and year last aforesaid, to wit, on the 17th day of April, A. D. 1891, there issued out of said clerk's office the people's writ of summons; which said writ is in the following words and figures, to wit:

STATE OF ILLINOIS, } ss:
Alexander County, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you to summon Illinois Central Railroad Company, if it shall be found in your county, personally to be and appear before the circuit court of said county of Alexander on the first day of the next term thereof, to be holden at the court-house in the city of Cairo, in said Alexander county, on the 11th day of May, 1891, to show cause why a writ of mandamus should not be issued against it upon a petition of the People of the State of Illinois filed this day in court against said company; and have you then and there this writ, with an endorsement thereon in what *matter* you shall have executed the same.

8 Witness Edmund S. Dewey, clerk of said court, and the seal thereof, at the city of Cairo aforesaid, this 17th day of April, A. D. 1891.

[SEAL.] EDMUND S. DEWEY, *Clerk.*

Upon which summons the said sheriff made the following return, to wit:

STATE OF ILLINOIS, } ss:
Alexander County, }

Personally served the within writ by reading the same to the within defendant, John D. Ladd, agent of Illinois Central Railroad Company, and at the time I delivered to him a true copy of the within writ the president of said company not found in my county; this 18th day of April, 1891.

JOHN HODGES, *Sheriff,*
Per S. G. MORSE, *Deputy.*

And afterwards, to wit, on the 14th day of May, in the year last aforesaid, the said defendant, by Green & Gilbert, its counsel, filed in said clerk's office its certain plea, which, in the words and figures, is as follows, to wit:

Of the May Term of the Alexander Circuit Court, 1891.

THE PEOPLE, &c., *vs.* I. C. R. R. Co. } Petition for Mandamus.

And the said defendant, by its attorneys, comes and defends, &c., and says the said petition is not sufficient in law; wherefore, &c.

GREEN & GILBERT,
For I. C. R. R. Co.

9 And for special causes of demurrer the respondent names the following:

1. The petition does not aver that the train which does not run into Cairo is a "regular passenger train."

2. The petition does not give such distinct description of what is called the fast mail train as will enable the court to make and order concerning it.

3. The prayer of the petition is broader than the petition.

4. The averment of a common-law right under the case stated is legally untrue and should be stricken out.

And afterwards, to wit, on the 14th day of April, in the year last aforesaid, the said petitioners, by their attorneys, filed in said clerk's office their certain *ma*endment to their petition for a mandamus, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, *County of Alexander*, } *ss*:

In the Circuit Court, May Term, 1891.

THE PEOPLE OF THE STATE OF ILLINOIS *vs.* ILLINOIS CENTRAL RAILROAD COMPANY. } Mandamus.

And now comes the petitioners, by John H. Mulkey and Lansden & Leek, their attorneys, and, by leave of the court first had and obtained, amend their petition as follows:

In the paragraph next preceding the prayer of the petition, in lines 24 & 25, page four (4) of petition, strike out after the words "by virtue of the" the words "statutes and common," and in the same paragraph, in line 3, page five (5), of the petition, strike
10 out the words "alike" and the words "statutory and common law."

JOHN H. MULKEY AND
LANSDEN & LEEK,
Attorneys for Petitioners.

And afterwards, to wit, on the 16th day of May, in the year last aforesaid, the said defendant, by *their* attorneys, filed in said clerk's office its certain plea, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Alexander County, }

Of the May Term of the Alexander Circuit Court, 1891.

THE PEOPLE OF THE STATE OF ILLINOIS, on the Relation of WILLIAM N. BUTLER, State's Attorney,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } Petition for Mandamus.

And the said defendant, for demurrer to the said petition, says the said petition as amended is not sufficient in law, and the defendant, by its attorneys, sets up the following causes of demurrer, namely: First, the amended petition does not aver that the train which does not run into Cairo is a "regular passenger train;" second, the petition does not give such distinct discription of what is called the fast mail train as will enable the court to make and order
11 concerning it; third, the petition raises a Federal question in this respect, that it seeks an order and judgment which shall control the operating of a train between different States, and the statute under which the power to regulate said train is claimed, namely, section eighty-eight of chapter one hundred and fourteen of the Revised Statutes of the State of Illinois, is in conflict with the Constitution of the United States & is therefore inoperative; fourth, the prayer of the petition is broader than the petition and asks the court to order six trains to be run into Cairo which were run into Cairo every day when the petition was filed and are still so running regularly into Cairo.

Wherefore the defendant, by its attorneys, prays judgment, &c.

GREEN & GILBERT,
Attorneys for the Defendant.

And afterwards, to wit, on the 2nd day of June, in the year last aforesaid, the said defendant, by its counsel, filed in said clerk's office its certain answer to the petition, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, }
Alexander County. }

Of the May Term of the Alexander Circuit Court, 1891.

THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of W. N. BUTLER, State's Attorney,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } Petition for Mandamus.

12 *The Answer of the said Illinois Central Railroad Co. to the said Petition.*

This respondent, the said Illinois Central Railroad Company, to the petition of the People of the State of Illinois on the relation of

W. N. Butler, State's attorney, praying for the issuance of the peremptory writ of mandamus, makes answer and says as follows:

First. The said petition does not seek a remedy against this respondent on account of any alleged failure by this respondent to furnish and supply to the public at the railroad station of the county-seat of Alexander county ample accommodation to meet the demand of public convenience and business necessities; but this respondent, by way of general answer to the purpose and object of said petition, states the fact to be that it daily furnishes and supplies to the said public at the said railroad station not only a sufficient number of "regular passenger trains" to meet the demands of public convenience and business necessities, but it furnishes and supplies to the public at said railroad station extensive accommodations for the carriage of passengers, which are more ample and more liberal than are furnished and supplie- to any other city in the State of Illinois of the same or near the same population or wealth as the said county-seat of Alexander county, and this respondent runs and operates to and from the aforesaid station at the aforesaid county-seat six "regular passenger trains" each day, known as trains numbered one and two, three and four, and forty-five and forty-six. Three of said trains, namely, trains numbered 1 and three and four, which are deemed by this respondent to be equal in importance to the other trains mentioned in all respects and in some respects to be of very much the greater importance, are purposely so
13 scheduled by this respondent as to be specially advantageous to the said city of Cairo, although other important interest- are ther-by injured and some equally important interests totally sacrificed. The said trains numbered three and four, which were formerly respondent's fastest regular passenger trains, stopping only at a very few stations, long before the filing of said petition were converted into accommodation trains, stopping at all stations on its railroad in all the territory within one hundred miles of the city of Cairo, with the special purpose of furnishing and supplying the largest practicable amount of local convenience to the public at Cairo and also furnishing the very best of accommodations to the public at Cairo for travel to Chicago, St. Louis, and New Orleans, although it is not pretended or claimed that the law required this respondent to stop the said trains numbered three and four at any of the various stations aforesaid.

Amendment filed July 6, '91.

E. S. DEWEY, *Clerk.*

And this respondent denies that the said fast mail train is run and operated on or upon any part of the county-seat of Alexander county aforesaid.

Second. It is admitted that the city of Cairo has between ten and eleven thousand population, and that it was incorporated in the year 1857, and it is at present a county-seat and so became in the year 1859; but this respondent states the fact to be that when its rail-

road was located there was not any incorporated or platted village, town, or city where the city of Cairo now is.

Third. This respondent denies that the said fast mail train is a "regular passenger train."

Fourth. It is admitted that this respondent located and built its railroad to its present passenger station on the land now sur-
14 rounded by the city of Cairo more than thirty-six years ago, and also extended its railroad before there was an incorporated or platted village, town, or city where Cairo now is to a point nine hundred and fifty feet in a southerly direction along the Ohio levee from the southerly line of its said passenger station grounds, which is the same as the northerly line of Second street at its intersection with Levee street, to which point it was constructed thirty-seven years ago, and to which point this respondent's railroad had been continuously operated for more than thirty-six years.

Fifth. This respondent corporation, for further answer to said petition says that it was created by an act of the General Assembly of the State of Illinois approved February 10, 1851, under the corporate name of "Illinois Central Railroad Company," in order that it might take and use the grant made to the State of Illinois by an act of Congress approved September 20th, 1850, in the construction of the railroad described in its charter (which is a public law) as one of the links in the great national highway which was manifestly contemplated by and in said act of Congress, and in order that this respondent might so operate the said railroad as to carry into effect and execute the uses and purposes directly and indirectly declared in said act of Congress in the most full and complete manner possible.

The operating of the said fast mail train, which is mentioned in said petition as not running to the station of the county-seat of Alexander county, is for the purpose of endeavoring to carry out and execute in the most full and complete manner possible the great trust reposed in the State of Illinois by the said act of Congress and in this respondent corporation, which succeeded to the grant
15 made by the said act of Congress, and thereby became bound to execute the aforesaid trust, and with the specific intention of carrying out by rapid transit the plan and design of said act of Congress and said act of incorporation in reference to the postal service, which will more fully appear by reference to the 6th section of said act of Congress and to the 19th section of said act of incorporation. And in order to make plain its legal attitude by further answer to said petition, respondent says that long prior to 1850 the Government of the United States had realized the public necessity of some means of rapid transportation between the Great Lakes on the north and the lower Mississippi and gulf of Mexico on the south, and recommendations based on such public necessity towards securing such rapid transportation had been urged by the Secretary of the Treasury, Secretary of War, and others, from time to time, beginning in 1808; that different measures for securing this end had been discussed in Congress—one of them, which was fostered by the General Government, was the construction of a canal connecting the said lakes with the Mississippi river—and in 1848 a bill was introduced in Congress

authorizing the granting of vast bodies of the public lands in Illinois and in States south of it to aid in the construction of a trunk line of railroad connecting Lake Michigan with the lower Mississippi river and the waters of the gulf of Mexico; and by an act approved September 20, 1850, the United States granted to the State of Illinois and other States between it and the gulf of Mexico a right of way through the public lands for the construction of such a trunk railroad from the Lakes to the Gulf. The grant by said act of Congress to the State of Illinois is made upon the express condition and limitation and for the sole purpose of the "construction of a railroad from the
16 southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago, on Lake Michigan," etc., and it was required by said act that a copy of the survey of said railroad and branches, made under the direction of the legislature, should be filed in the General Land Office at Washington city; and it was provided also by said act that said railroad should be commenced at the same time at both ends and continued until the main line should be completed, and when so completed certain branch roads should be made. The said act of Congress further and expressly provided that the land granted thereby "shall be applied in the construction of said railroad and branches respect*fully* in quantities corresponding with the grant for each, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever." By section 4 of said act it is repeated that the said lands shall be disposed of by said States "for the purpose aforesaid and no other, and that the said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll and other charge upon the transportation of any property or troops of the United States." By section 5 of the said act of Congress said lands were to be forfeited if said railroad was not built within ten years, and reinvested in the United States, and by section 6 it was provided "that the United States mail shall at all times be transported on the said railroad, under the direction of the Post Office Department, at such price as the Congress may by law direct;" and by section 7 a provision was made as to the other States lying south of Illinois, giving them similar grants of land on "same terms, limitations, and restric-
17 tions in every respect," and declaring expressly that said grants were "in order to aid the continuation of said railroad."

This respondent further says that the State of Illinois formerly accepted the grant of the United States aforesaid upon the terms and conditions and for the purposes therein contained, and that the State of Illinois, after many vain efforts, finding it was not able to carry out said trusts, passed the act under which respondent was organized, and charged respondent with the carrying out of the purpose of Congress in said act aforesaid and the trust- and duties therein declared, charging respondent, by the 15th section of said charter, to apply all the proceeds of said grant "to the constructing, completing, equipping, furnishing said road and branches in ac-

cordance with the terms of this act and said act of Congress," and indemnifying the State of Illinois in case the said railroad was not "completed as required by the act of Congress above referred to."

This respondent further says that as a part of this scheme of Congress, and for the express purpose of the "continuation of said Central railroad" as provided in said act of Congress, there was a convention of the people of States south of the Ohio river, held in New Orleans, at which aid was promised, and each of the States was petitioned to grant liberal charters and State aid and to co-operate with each other and the people in said territory in securing the building of said trunk line from the Lakes to the Gulf, as outlined by Congress, so as to have rapid transportation over the whole distance, and in pursuance thereof the States of Alabama, Mississippi, Louisiana, Tennessee, and Kentucky granted charters to railroad companies respectively expressly for the purpose aforesaid, so that the lines so built in said States should, together with the Illinois Central, from the great "Central railroad" mentioned in said act of Congress.

18 This respondent further says that the chief object to be attained was not the building of said central trunk line to any particular point on the Ohio river, but such chief object as well as the paramount duty of those States accepting said grant of Congress, as well as the several corporations chartered to carry out said purpose and perform said duties, was to construct a central trunk railroad from the Lakes to the Gulf, so that transportation between them would be direct and rapid; that at the time this respondent was surveying its line under the charter and the act of Congress aforesaid and securing rights of way it acquired the land upon the north side of the Ohio river which was proper, convenient, and necessary for "the continuation of said Central railroad" southerly and for a connection with that part of said "Central railroad" from the Gulf to the Ohio river, and has so owned said land ever since; but the progress of building that part of said trunk line north of the Ohio river was more rapid than the part south thereof, and respondent, while constructing its railroad in a direct line to the bank of the Ohio river at the proper place for such crossing and connection, made also a sharp turn and followed the north bank of said river with a track down several miles, to wit, to a point nine hundred and fifty feet (950) below what is known as Second street on the present plat of Cairo, but at the time above mentioned there was not any incorporated or platted village, town, or city where Cairo now is, so respondent is informed and believes.

Respondent further says that the point at which its line from the north reached the Ohio river, and where it acquired land as aforesaid suitable for a continuation of said "Central railroad" southward, is and was a compliance with the said act of Congress, being "a point near the junction of the Ohio and Mississippi rivers,"

19 as provided in said act of Congress, and is and was a compliance with the directions of its charter, being "a point at the city of Cairo," provided in the second section thereof, and is and was a compliance with the fifteenth section and subdivision three

(3) of its charter, to wit, to run from the city of Cairo to the southern terminus of the Illinois and Michigan canal and nowhere departing more than seventeen miles from a straight line," &c.

This respondent shows that the peculiar conformation of the land and water at and near the junction of the Ohio and Mississippi rivers is such that a bridge across said Ohio river, connecting the southern and northern parts of the "Central railroad" mentioned in said act of Congress, is no practicable at any point near to the end of its track on the bank of said river in Cairo or below it than the place where it now is, and that even at the place where it now is it became necessary, in order to avoid the Mississippi river in its course just above Cairo, to curve the incline or approach to said bridge from the north sharply to the east after leaving said bridge, the elevation of said bridge, as required by the act of Kentucky and by the general acts of Congress, being so great that it is — feet above the natural level of the ground on the Illinois side of said river.

And so this respondent says the said fast mail train so run and operated as aforesaid was not contemplated by or referred to by the eighty-eight- section of chapter 114 of the Revised Statutes, either in its purview or proviso; which said section 88 is the alleged foundation for the specific right sought to be enforced by said petition and is as follows:

88. Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station, advertised by such corporations as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: Provided all regular passenger trains shall stop a sufficient length of time at the railroad station of county-seats to receive and let off passengers with safety.

Sixth. This respondent did not, as is untruely alleged in said petition, build or cause to be built the bridge therein referred to. The bridge aforesaid was built by another corporation, under authority from the State of Kentucky, to the northwestern boundary line of said State at low-water mark of the Ohio river, and the said corporation extended its railroad on and along said bridge to the northwestern end thereof, and this respondent, as it lawfully might do, proceeded to make connection with the aforesaid railroad at the northwestern end of the bridge aforesaid, and in doing so this respondent built an elevated approach to the aforesaid northwestern end of said bridge; which approach begins at the grade of respondent's railroad at a distance more than three-fifths of a mile, said distance being exactly 3,324 feet northerly from the extreme northern corporate limits of the county-seat of Alexander county aforesaid, and at once begins to rise at a grade of about 35 feet to the mile, and when said approach reaches the corporate limits of the county-seat aforesaid it is elevated about 28 feet above the grade of its main track and about 40 feet above the level of the ground, and said approach continues to rise until it reaches the northwesterly end of the railroad built on and along said bridge at the height of about sixty-seven feet above the level of the natural ground over which

it is built; and so this respondent further answers and says
21 the aforesaid fast mail train is not within the purview or the proviso of the said eighty-eighth section.

Seventh. This respondent, for further answer, says the said petition is based upon said section 88 of chapter 114 of the Revised Statutes, and thus raises a Federal question, because the said section 88, by any interpretation that could make it applicable to said fast mail train, is an interstate-commerce regulation. The said fast mail train is specially organized to carry, and under contract between the United States and this respondent does carry, the United States mail between Chicago, in the State of Illinois, and New Orleans, in the State of Louisiana, and any statute of the State of Illinois which arbitrarily commands this respondent to divert said fast mail train from its shortest available route from the city of Chicago to the city of New Orleans and to operate said train seven miles further than necessary in going between said cities is in violation of the Constitution of the United States and is inoperative upon this respondent.

This respondent further says that by the terms of the Federal Constitution the States and people surrendered by said compact between themselves the power and right to regulate commerce with foreign nations, among the several States, and with the Indian tribes to the Congress or the United States, and that said power resides exclusively in the said Congress, and no part of it has been or can be resumed by said States without a violation of said Constitution, and that non-action by Congress under said power does not have the effect of reinvesting in said States any part thereof, and that the statute of the State of Illinois relied on by petitioners, if it
requires the special fast mail train to go out of and off the
22 direct line of said "Central railroad" connecting these several States is a violation of said provision of the United States Constitution.

This respondent further says that the Congress of the United States has from time to time exercised the power so granted it, and has by statutes, duly approved and promulgated as laws and now in force, undertaken to regulate the carrying of mails and passengers "from any State to another State, and have also authorized railroad companies" to connect with the roads of other States so as to form continuous lines for the transportation of the same to the place of designation, but providing that such authority so granted shall not "impair or change the conditions imposed by the terms of any act granting lands to any such company to aid in the construction of its road." So the State of Illinois by statutes in force since, heretofore, to wit, the time of the building of respondent's railroad, authorized the connection of railroads of this State with railroads in other States, and had also statute laws authorizing railroad companies in this State to acquire by lease or otherwise the control of railroads in other States connecting therewith.

Respondent further says that so soon as the Chicago, St. Louis & New Orleans Railroad Company had extended its railroad, connecting the gulf of Mexico with the south side of the Ohio river, and had

completed its bridge over the Ohio river to the boundary line of the State of Illinois, the respondent built an incline over the land so acquired by it aforesaid so as to complete the direct connection by continuous rail of that part of said "Central railroad" authorized by Congress, as aforesaid, lying north of the Ohio river with that part lying south thereof, and that thereby was accomplished the purpose of Congress in the act aforesaid, and the duties and
23 trusts assumed by the State of Illinois in accepting said land grant and turning the same over to respondent were fully executed.

Respondent further says that the Post Office Department directs and controls the transportation of the mails over the whole line from Chicago to New Orleans and Mobile, and that by acts of Congress it is made the duty of the Postmaster General to decide upon what trains and in what manner the mails shall be conveyed, and shall require that such mails be carried with due frequency and speed, and that the requirements of the Post Office Department and the business interests of the country, as well as the best interests of the respondent, demand that one train each way between Chicago and New Orleans and other cities on or near the gulf of Mexico shall make the fastest time consistent with safety; that in order to provide facilities for rapid transit of through mails and passengers over the "Central road" contemplated by Congress in said land-grant acts and to catch the eastern mail an extra train was put on each way, leaving Chicago at 3.15 a. m., for the special purpose of carrying a fast mail, and the time required by the Post Office Department for such fast mail trains to make between the Lakes and the Gulf is impossible if such trains are required to stop at each county-seat, and the enforcing of such stops would not in the slightest benefit petitioners, as it would necessitate the taking off of both of said fast mail trains, and the fact is that while they continue at present speed the morning newspapers and mail from Chicago are delivered in Cairo about noon of the same day, many hours sooner than ever heretofore, and so of mails from the South. The respondent is required by the United States Post Office Department to make the schedule time of said fast mail trains, and for every failure respondent is fined and has a penalty imposed by the United States. The re-
24 spondent's duties, which it is now and was before the filing of the petition in this cause bound to the United States to perform, *is* made impossible of performance if its trains are required not only to stop at county-seats, but to go off and from the direct line several miles to another part of Cairo and return, as the petition seeks to have it compelled to do, and if it is plain that the statute relied on by the petitioners requires that these two trains, which are not regular passenger trains, shall go off said direct line down the bank of the Ohio river several miles below its connection with the Chicago, St. Louis & New Orleans railroad, then respondent insists that said statute is a regulation of interstate commerce and unconstitutional, being in violation of section 8, article 1, of the Constitution of the United States.

Neither of said fast mail trains were ever intended as a regular

passenger train. They are scheduled to stop only at a very few places between the Lakes and the Gulf, and are special mail trains, and were and are so intended and advertised. Incidentally they carry through passengers and such persons as may wish to get on or off at such stopping places as are necessary, which do not interfere with the requisite speed.

This respondent, now having fully answered said petition, prays to be discharged hence with reasonable costs.

ILLINOIS CENTRAL RAILROAD COMPANY,
By GREEN & GILBERT, *Its Solicitors.*

And afterwards, to wit, on the 2nd day of June, in the year last aforesaid, the said petitioners, by their attorneys, filed in said clerk's office their certain plea, which is in words and figures as
25 follows, to wit:

STATE OF ILLINOIS, } ss:
County of Alexander, }

In the Circuit Court of said County, to the May Term, A. D. 1891.

THE PEOPLE OF THE STATE OF ILLINOIS } Petition for Mandamus.
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. }

And the said petitioners, by John H. Mulkey and Lansden & Leek, their attorneys, as to the paragraph- in the respondent's answer by it firstly, secondly, fourthly, fifthly, sixthly, and seventhly above pleaded, say that the said paragraphs are and each of them is not sufficient in law, and that they are not bound by law to answer the same; wherefore the petitioners pray judgment, etc.

JOHN H. MULKEY AND
LANSDEN & LEEK,
Attorneys for Petitioners.

And on the day and year last aforesaid, to wit, on the second day of June, A. D. 1891, the said petitioners, by their attorneys, filed in said clerk's office their certain plea, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Alexander, }

In the Circuit Court of said County, to the May Term, A. D. 1891.

THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of W. N. BUTLER, State's Att'y, } Petition for Mandamus.
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. }

26 And the said petitioners, as to the paragraph in the said respondent's answer by it thirdly above pleaded, say that

they, the petitioners, by reason of anything in that paragraph alleged, ought not to be barred from having their aforesaid action against the said respondent, because they say that the said fast mail train is a "regular passenger train;" and this the petitioners pray may be *re*quired of by the country, etc.

JOHN H. MULKEY AND
LANSDEN & LEEK,
Att'ts for Petitioners.

And the respondent doth the like.

GILBERT & GREEN,
For Respondent.

And afterwards, to wit, on the 6th day of July, in the year last aforesaid, the said defendant, by its attorneys, files with the clerk of said court its certain motion, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, }
Alexander County. }

In the Circuit Court, to the May Term.

THE PEOPLE, &C., }
vs. } Petition for Mandamus.
I. C. R. R. Co. }

And the respondent moves the court to strike the replication filed herein from the files.

GILBERT & GREEN,
Attorneys for Respondent.

And afterward, to wit, on the 28th day of December, in
27 the year last aforesaid, the said parties, by their attorneys, file with the clerk of said court their certain stipulation, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Alexander, } *ss:*

In the Circuit Court of said County, to the October Term, A. D. 1891.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.*, etc., }
vs. } Mandamus.
ILLINOIS CENTRAL RAILROAD COMPANY. }

It is hereby stipulated by and between the parties of the above-entitled cause that a jury shall be waived in said cause, and that the same shall be submitted to and tried by the Hon. A. K. Vickers, one of the judges of the first judicial circuit of the State of Illinois, at the court-house, in the city of Cairo, Illinois, on such day in the month of February, A. D. 1892, as the said judge may fix, the par-

ticular time to be fixed and entered of record in said cause on Monday next, or as soon thereafter as practicable, by said Judge Vickers.

It is further stipulated that said cause shall be certainly tried on the day which shall be fixed by said Judge Vickers.

It is further stipulated that the respondent in said cause shall produce all its witnesses in open court for examination, and that it shall have no right to take the deposition of any witness to be read in evidence on the trial of said cause.

Dated at Cairo, Illinois, this 25th day of December, A. D. 1891.

LANSDEN & LEEK,
Attorneys for Petitioners.
GILBERT & GREEN,
Attorneys for Respondent.

28 And afterward, to wit, on the 8th day of February, A. D. 1892, the said petitioners, by their attorneys, filed in said clerk's office their certain demurrer, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Alexander, } *ss:*

In the Circuit Court of said County, to the February Term, A. D. 1892.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* WILLIAM N. BUTLER, as State's Attorney for Alexander County, Illinois, *vs.* ILLINOIS CENTRAL RAILROAD COMPANY. } Petition for Mandamus.

And your petitioners come and say that the said answer and the several parts thereof are not sufficient in law and show to the court the following causes of special demurrer to said answer: For that the first, fifth, sixth, and seventh paragraphs of the said answer are and each and every of them and every part thereof and all of that portion of the second paragraph of the said answer which follows the figures 1859 in said paragraph is and are irrelevant, impertinent and argumentative—irrelevant and impertinent in this, that they do not tend to prove any issue in the case, nor do they show any defense to the matters and things set up in the petition; and argumentative in this, that they contain irrelevant and impertinent matter, from which it is sought to induce legal conclusions adverse to the petitioners' right to relief and which are not warranted by law; and for that the amendment failed to the first paragraph of said answer on the 6th day of July, 1891, is ambiguous, uncertain, and inconsistent with other parts of the answer—is ambiguous
29 and uncertain in this, that it cannot be shown what is meant or intended by the allegation "that said fast mail train is nor run on or upon any part of the county-seat," or, more shortly, what the running of a train on or upon the county-seat means. If

by the allegation in question it is intended to allege that the train in question does not run or come within the corporate limits of the city of Cairo, then it is in direct conflict with the express admission of the respondent in paragraph 4 of its answer; and for that the sixth and seventh paragraphs of the said answer are uncertain in this, that neither of said paragraphs allege with sufficient precision that the line of railroad south of the Ohio river which is operated by the respondent constitutes a part of the national highway referred to in respondent's answer contemplated by the act of Congress referred to in said answer, it not being in any way alleged therein that any of the States south of the Ohio river granted to the railroad company owning the line of railroad operated by the respondent south of said Ohio river the lands which were granted to them by said act of Congress to aid in the construction of said through line of railroad.

JOHN H. MULKEY AND
LANSDEN & LEEK,
Att'ys for Petitioners.

And afterward, to wit, on the 10th day of February, A. D. 1892, the said defendant, by its attorneys, files in said clerk's office its certain amended answer, which is in the words and figures as follows, to wit:

Amended Answer.

STATE OF ILLINOIS, } *ss:*
Alexander County, }

Of the February Term of the Alexander Circuit Court, 1892.

30 THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of W. N. BUTLER, State's Attorney,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } Petition for Mandamus.

The answer of said Illinois — Railroad Company to the said petition.

This respondent, the said Illinois Central Railroad Company, to the petition of The People of the State of Illinois on the relation of W. N. Butler, State's attorney, praying for the issuance of the peremptory writ of mandamus, makes answer and says as follows:

First. The said petition does not seek a remedy against this respondent to furnish and supply to the public at the railroad station at the county-seat of Alexander county ample accommodations to meet the demands of public convenience and business necessities; but this respondent, by way of general answer to the purpose and object of said petition, states the fact to be that it daily furnishes and supplies to the said public at the said railroad station not only a sufficient*ly* number of "regular passenger trains" to meet the demands of public convenience and business necessities, but it furnishes and supplies to the public at said railroad station extensive

accommodations for the carriage of passengers, which are more ample and more liberal than are furnished and supplied to any other city of the State of Illinois of the same or near the same population and wealth as the said county-seat of Alexander county, and this respondent runs and operates to and from the aforesaid station at the aforesaid county-seat six "regular passenger trains" each day, known as trains numbered one and two, three and four, and forty-five and forty-
31 six, three of said trains, namely, trains numbered one and three and four, which are deemed by this respondent to be equal in importance to the other trains mentioned in all respects and in some respects to be of very much the greater importance, are purposely so scheduled by this respondent as to be specially advantageous to the city of Cairo, although other important interests are thereby injured and some equally important interests totally sacrificed. The said trains numbered three and four, which were formerly respondent's fastest passenger trains, stopping only at a very few stations, long before the filing of said petition were converted into accommodation trains, stopping at all stations on its railroad in all the territory within one hundred miles of the city of Cairo, with the special purpose of furnishing and supplying the largest practicable amount of local convenience to the public at Cairo for travel to Chicago, St. Louis, and New Orleans, although it is not pretended or claimed that the law required this respondent to stop the said trains numbered three and four at any of the various stations aforesaid; and this respondent denies that the said fast mail train is run and operated on or upon any part of the county-seat of Alexander county aforesaid.

Second. It is admitted that the city of Cairo has between ten and eleven thousand population, and that it was incorporated in the year 1857, and is at present a county-seat, and so became in the year 1859 (but this respondent states the fact to be that when its railroad was located there was not any incorporated or platted village, town, or city where the city of Cairo now is).

Third. This respondent denies that the said fast mail train is a "regular passenger train."

Fourth. It is admitted that this respondent located and built its railroad to its present passenger station on the land now surrounded by the city of Cairo more than thirty-six years ago, and also
32 extended its railroad before there was an incorporated or platted village, town, or city where Cairo now is, to a point nine hundred and fifty feet in a southerly direction along the Ohio levee from the southerly line of its said passenger station grounds, which is the same as the northerly line of Second street at its intersection with Levee street, to which point it was constructed thirty-seven years ago and to which point this respondent's railroad has been continuously operated for more than thirty-six years.

Fifth. This respondent corporation, for further answer to said petition, says that it was created by an act of the General Assembly of the State of Illinois approved February 10, 1851, under the corporate name of "Illinois Central Railroad Company," in order that it might take and use the grant made to the State of Illinois by an

act of Congress approved September 20th, 1850, in the construction of the railroad described in its charter (which is a public law) as one of the links in the great national highway which was manifestly contemplated by and in said act of Congress, in order that this respondent might so operate the said railroad as to carry into effect and execute the uses and purposes directly and indirectly declared in said act of Congress in the most full and complete manner possible. The operating of the said fast mail train, which is mentioned in said petition as not running to the station of the county-seat of Alexander county, is for the purpose of endeavoring to carry out and execute in the most full and complete manner possible the great trust reposed in the State of Illinois by the said act of Congress, and in this respondent corporation, which succeeded to the grant made by said act of Congress and thereby became bound to execute the
33 aforesaid trust, and with the specific intention of carrying out by rapid transit the plan and design of said act of Congress and said act of incorporation in reference to the postal service, which will more fully appear by reference to the 6th section of the said act of Congress and to the 9th section of said act of incorporation; and in order to make plain its legal attitude by further answer to said petition, respondent says that long prior to 1850 the Government of the United States had realized the publis necessity of some means of rapid transportation between the Great Lakes and the lower Mississippi and gulf of Mexico on the south, and recommendations based on such public necessity towards securing such rapid transportation had been urged by the Secretary of the Treasury, the Secretary of War, and others, from time to time, beginning in 1808; that different measures for securing this end had been discussed in Congress. One of them, which was fostered by the General Government, was the construction of a canal connecting the said lakes with the Mississippi river, and in 1848 a bill was introduced in Congress authorizing the granting of vast bodies of the public lands of Illinois and in the States south of it to aid in the construction of a trunk line of railroad connecting Lake Michigan with the lower Mississippi river and the waters of the gulf of Mexico; and by an act approved September 20th, 1850, the United States granted to the State of Illinois and other States between it and the gulf of Mexico a right of way through the public lands for the construction of such a trunk railroad from the Lakes to the Gulf.

The grant by said act of Congress to the State of Illinois is made upon the express condition and limitation and for the sole purpose of the "construction of a railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction
34 of the Ohio and Mississippi rivers with the branch of the same to Chicago, on Lake Michigan," etc., and it was required by said act that a copy of the survey of said railroad and branches, made under the direction of the legislature, should be filed in the General Land Office at Washington city; and it was provided also by said act that said railroad should be commenced at the same time at both ends and continued until the main line should be

completed; when so completed, certain branch roads should be made.

The said act of Congress further and expressly provided that the land granted thereby "shall be applied to the construction of said railroad and branches respectively in quantities corresponding with the grant for each, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever."

By section 4 of said act it is repeated that the said lands shall be disposed of by said States "for the purpose aforesaid and no other, and that the said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States."

By section 5 of said act of Congress said lands were to be forfeited if said railroad was not built within ten years and reinvested in the United States, and by section 6 it was provided "that the United — mails shall at all times be transported on the said railroad under the direction of the Post Office Department, at such price as the Congress may by law direct," and by section 7 a provision was made as to other States lying south of Illinois, giving them similar grants of lands on "same terms, limitations, and restrictions in every respect," and declaring expressly that said grants were
35 "in order to aid the continuation of said railroad."

This respondent further says that the State of Illinois formerly accepted the grant of the United States aforesaid upon the terms and conditions and for the purposes therein contained, and that the State of Illinois, after many vain efforts, finding it was not able to carry out said trust, passed the act under which respondent was organized, and charged respondent with the carrying out the purpose of Congress in said act aforesaid and the trusts and duties therein declared, charging respondent by the 15th section of said charter to apply all the proceeds of said grant "to the constructing, completing, equipping, and furnishing said road and branches in accordance with the terms of this act and said act of Congress," and idemnifying the State of Illinois in case the said railroad was not "completed as required by the act of Congress above referred to."

This respondent further says that as a part of this scheme of Congress and for the express purpose of the "continuation of said Central railroad" as provided in said act of Congress there was a convention of the people of the States south of the Ohio river, held in New Orleans, at which aid was promised, and each of the States was petitioned to grant liberal charters and State aid to co-operate with each other and the people in said territory in securing the building of said trunk line from the Lakes to the Gulf, as outlined by Congress, so as to have rapid transportation over the whole distance, and in pursuance thereof the States of Alabama, Mississippi, Louisana, Tennessee, and Kentucky granted charters to railroad company respectively expressly for the purpose aforesaid, so that the lines so built in said States should, together with the Illinois Central, form the great "Central railroad" mentioned in said act of Congress.

36 The respondent further says that the chief object to be attained was not the building of the said central trunk line to any particular point on the Ohio river, but such chief object, as well as the paramount duty of those States accepting the said grant of Congress, as well as the several corporations chartered to carry out said purpose and perform said duties, was to construct a central trunk railroad from the Lakes to the Gulf, so that transportation between them would be direct and rapid.

That at the time this respondent was surveying his line under the charter and the act of Congress aforesaid and securing rights of way it acquired the land upon the north side of the Ohio river which was proper, convenient, and necessary for "the continuation of said Central railroad" southerly and for a connection with that part of said "Central railroad" from the Gulf to the Ohio river, and has so owned said land ever since; but the progress of building that part of said trunk line north of the Ohio river was more rapid than the part south thereof; and respondent while constructing its railroad in a direct line to the bank of the Ohio river at the proper place for such crossing and connection made also a sharp turn and followed the north bank of said river with a track down several miles, to wit, to a point nine hundred and fifty feet (950) below what is known as Second street on the present plat of Cairo, but at the time above mentioned there was not any incorporated or platted village, town, or city where Cairo now is, so respondent is informed and believes.

Respondent further says that the point at which its line from the north reached the Ohio river and where it acquired land, as
37 aforesaid, suitable for a continuation of said "Central railroad" southward is and was a compliance with the said act of Congress, being "a point near the junction of the Ohio and Mississippi rivers," as provided in said acts of Congress, and is and was a compliance with the directions of its charter, being "a point at the city of Cairo" provided in the second section thereof, and is and was a compliance with the fifteenth section and subdivision three (3) of its charter, to wit, to run from the city of Cairo to the southern terminus of the Illinois and Michigan canal, and nowhere departing more than seventeen miles from a straight line," &c.

This respondent shows that the peculiar confirmation of the land and water at and near the junction of the Ohio and Mississippi rivers is such that a bridge across said Ohio river connecting the southern and northern parts of the "Central railroad" mentioned in said act of Congress is not practicable at any point nearer to the end of its track on the bank of said river in Cairo or below it than the place where it now is, and that even at the place where it now is it became necessary, in order to avod the Mississippi river in its course above the city of Cairo, to curve the incline or approach to said bridge from the north sharply to the east after leaving said bridge, the elevation of said bridge, as required by the act of Kentucky and by the general acts of Congress, being so great that it is sixty-seven feet above the natural level of the ground on the Illinois side of said river.

And so this respondent says the said fast mail train so run and operated as aforesaid was not contemplated by or referred to by the eighty-eight- section of chapter 114 of the Revised Statutes, either in its purview or proviso; which said section 88 is the
38 alleged foundation for the specific right sought to be enforced by said petition and is as follows:

88. Every railroad corporation shall cause its passenger train to stop upon its arrivals at each station, advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: Provided all regular passenger trains shall stop a sufficient length of time at the railroad stations of county-seats to receive and let off passengers with safety.

Sixth. This respondent did not, as is untruely alleged in said petition, build or cause to be built the bridge therein referred to. The bridge aforesaid was built by another corporation, under authority from the State of Kentucky, to the northwestern boundary line of said State at low-water mark of the Ohio river, and the said corporation extended its railroad on and along said bridge to the northwestern end thereof, and this respondent, as it lawfully might do, proceeded to make connection with the aforesaid railroad at the northwestern end of the bridge aforesaid, and in doing so this respondent built an elevated approach to the aforesaid northwestern end of said bridge; which approach begins at the grade of respondent's railroad at a distance more than three-fifths of a mile, said distance being exactly 3,324 feet northerly from the extreme northern corporate limits of the county-seat of Alexander county aforesaid, and at once begins to rise at a grade of about 35 feet to the mile, and when said approach reaches the corporate limits of the county-seat aforesaid it is elevated about 28 feet above the grade of its main track and about 40 feet above the level of the ground, and said approach continues to rise till it reaches the northwesterly
39 end of the railroad built on and along said bridge at the height of about sixty-seven feet above the level of the natural ground over which it is built; and so this respondent further answers and says the aforesaid fast mail train is not within the purview or proviso of the said eighty-eight- section.

Seventh. This respondent, for further answer, says the said petition is based on said section eighty-eight of chapter 114 of the Revised Statutes, and thus raises a Federal question, because the said section 88, by any interpretation that could be made applicable to said fast mail train, is an interstate regulation. The said fast mail train is specially organized to carry, and under contract between the United States and this respondent does carry, the United States mail between Chicago, in the State of Illinois, and New Orleans, in the State of Louisiana, and any statute of the State of Illinois which arbitrarily commands this respondent to divert said fast mail train from its shortest available route from the city of Chicago to the city of New Orleans and to operate said train seven miles further than necessary in going between said cities is in violation of the

Constitution of the United States and is inoperative upon this respondent.

The respondent further says that by the terms of the Federal Constitution the States and people surrendered by said compact between themselves the power and right to regulate commerce with foreign nations, among the several States, and with the Indian tribes to the Congress of the United States, and that said power resides exclusively in said Congress, and no part of it has been or can be resumed by said States without a violation of said Constitution, and that non-action by Congress under said power does not have the effect of reinvesting in said States any part thereof,
40 and that the statute of the State of Illinois relied on by petitioners, if it require the special fast mail train to go out of and off the direct line of said "Central railroad" connecting these several States, is a violation of said provision of the United States Constitution.

The respondent further says that the Congress of the United States has from time to time exercised the power so granted it, and has by statute-, duly approved and promulgated as laws and now in force, undertaken to regulate the carrying of mail- and passengers "from any State to another State, and have also authorized railroad company-s" to connect with the roads of other States so as to form continuous lines for the transportation of the same to the place of destination, but providing that such authority so granted shall not "impair or change the conditions imposed by the terms of any act granting lands to any such company to aid in the construction of its road." So the State of Illinois by statutes in force since, heretofore, to wit, the time of the building of respondent's railroad, authorized the connection of railroads of this State with railroads in other States, and had also statute laws authorizing railroad companies in this State to acquire by lease or otherwise the control of railroads in other States connecting therewith.

Respondents further says that so soon as the Chicago, St. Louis and New Orleans Railroad Company had extended its railroad, connecting the gulf of Mexico with the south side of the Ohio river, and had completed its bridge over the Ohio river to the boundary line of the State of Illinois, that the respondent built an incline over the land so acquired by it aforesaid so as to complete the direct connection by continuous rail of that part of said "Central railroad" authorized by Congress, as aforesaid, lying north of the Ohio river with that part lying south thereof, and that thereby was accomplished
41 the purpose of Congress in the act aforesaid, and the duties and trusts assumed by the State of Illinois in accepting said land grant and turning the same over to respondent were fully executed.

Respondent further says that the Post Office Department directs and controls the transportation of the mails over the whole line from Chicago to New Orleans and Mobile, and that by acts of Congress it is made the duty of the Postmaster General to decide upon what trains and in what manner the mails shall be conveyed, and shall require that such mails be carried with due frequency and speed,

and that the requirements of the Post Office Department and the business interests of the country, as well as the best interests of respondent, demand that one train between Chicago and New Orleans and other cities on or near the gulf of Mexico shall make the fastest time consistent with safety, and the said fast mail train was organized and is operated in pursuance of said requirements.

Respondent further says that the said fast mail train which, it is alleged in said petition, is not brought down to the aforesaid passenger depot in Cairo, is a special train, organized specially to carry the United States mail, and not to carry passengers; that the schedule for the said fast mail train is prepared and regulated by the Post Office Department of the Government of the United States, and is not subject to the orders of this respondent, as other schedules are, and cannot be changed as other schedules can be changed by this respondent, except by permission of the said Post Office Department; that the said fast mail train is not equipped as regular passenger trains, and does not stop anywhere for meals, and has no provision or accommodation for furnishing meals to passengers, and does not stop anywhere, ever for lunch for the train crew who operate the said train, anywhere between Chicago and Holly
42 Springs, Mississippi, when the said train stops 5 minutes for lunch for the said train; and as to the said south-bound fast mail train this respondent says that the averment in said petition that the said south-bound fast mail train runs through the upper part of the city and over the aforesaid bridge, and stops at no point less than seven miles of the city of Cairo, is not true.

And the respondent states the exact facts in reference to said south-bound fast mail train to be as follows:

The said train is made up in Chicago as a special train, not to carry passengers but to carry the United States mail, and has no passenger car except a compartment car, and leaves Chicago at three o'clock and fifteen minutes a. m., and runs to Bridge Junction, a point about three-fifths of a mile north of the corporate limits of the said county-seat. At Duquoin the said fast mail train couples onto that portion of the Cairo short line train from St. Louis which is bound for Cairo, and all passengers for Cairo are placed in the first-class coach in the train thus made up at Duquoin, and the United States mail is carried on said train to the depot aforesaid, and at Bridge Junction that portion of the train bound south of Cairo is separated from the train and, hauled by a fresh engine, proceeds over the bridge aforesaid, and the balance of the train, hauled by the same engine that hauled the entire train from Duquoin, runs down into the city of Cairo and stops at the station-house or depot on block one, in said city.

The respondent says a compulsory order of this court requiring that portion of the said fast mail train bound south to be hauled seven miles out of the way, down into the city of Cairo, to the said depot of block No. one, and back again to Bridge Junction, would not be in accordance with the spirit and true interpretation
43 of the alleged section 88 aforesaid, and would be unlawfully detaining the United States mails and interfering with the

interstate commerce, and would be a palpable violation of the Constitution and statutes of the United States.

Eighth. This respondent says it does stop all of its regular passenger trains at the depot at said block one, in the city of Cairo.

Ninth. And this respondent, in reference to the said supposed section 88 of chapter 114 of the Revised Statutes, says it is placed in the said chapter *on* the supposition that it was passed and enacted by the General Assembly of the State of Illinois in the following enactment, as it appears in the official volume of laws of the State of Illinois enacted by the Thirty-first General Assembly, and not otherwise, namely:

"An act to amend section twenty-five of 'An act in relation to fencing and operating railroads,'" approved March 31, 1874; in force July 1, 1874; approved May 29, 1879; in force July 1, 1879.

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, that section twenty-five of an act entitled, "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874, be amended so as to read as follows:

SECTION 25. Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station advertised by such corporation as a place for receiving and discharging passengers, upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: Provided, all regular passenger trains shall stop a sufficient length of time at the railroad station of county-seats, to receive and let off passengers with safety, approved May 29th, 1879.

44 As will more fully appear by reference to the official volume of Laws of the State of Illinois enacted by the Thirty-first General Assembly, page 225.

But this respondent says in truth and in fact the said supposed act above recited is a nullity, and that it did not pass the house of representatives of the General Assembly of the State of Illinois and never became a law.

This respondent, now having fully answered said petition, prays to be discharged hence with reasonable costs.

ILLINOIS CENTRAL RAILROAD COMPANY,
By GREEN & GILBERT, *Its Attorneys.*

And afterward, to wit, on the 10th day of February, A. D. 1892, the said petitioners, by their attorneys, file in said clerk's office their certain demurrer, which is in the words and figures as follows, to wit:

STATE OF ILLINOIS, }
County of Alexander, } ss:

In the Circuit Court, Feb. Term, 1892.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* WM. N. BUTLER, State's Attorney, Alexander County, Illinois,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY. } Petition for Mandamus.

And your petitioners come and say that the said answer and the several parts thereof are not sufficient in law and show to the court
45 the following causes of special demurrer to said answer: For that the first, fifth, sixth, and seventh paragraphs of the said answer are and each and every one of them and every part thereof and all that portion of the second paragraph of the said answer which follows the figures 1859 in said paragraph is and are irrelevant, impertinent, and argumentative—irrelevant and impertinent in this, that they do not tend to prove any issue in the case, nor do they show any defense to the matters and things set up in the petition; and argumentative in this, that they contain irrelevant and impertinent matters, from which it is sought to deduce legal conclusions adverse to the petitioners' right to relief and which are not warranted by law; and for that last sentence of the first paragraph of said answer is ambiguous, uncertain, and inconsistent with other part of the answer—is ambiguous and uncertain in this, that it cannot be known what is meant by the allegation "that said fast mail train is not run on or upon any part of the county-seat," or, more shortly, what the running of a train on or upon the county-seat means. If by the allegation in question it is intended to allege that the train in question does not run or come within the corporate limits of the city of Cairo, then it is in direct conflict with the express admission of the respondent in paragraph four (4) of its answer; and for that the sixth and seventh paragraphs of the said answer are uncertain in this, that neither of said paragraphs alleges with sufficient precision that the line of railroad south of the Ohio river which is operated by the respondent constitutes a part of the national highway referred to in respondent's answer contemplated by the act of Congress referred to in said answer, it not being in any way alleged therein that any of the States south of the Ohio river granted to the railroad company owning the line of railroad operated by
46 the respondent south of the said Ohio river the lands which were granted to them by said act of Congress to aid in the construction of said through line of railroad.

JOHN H. MULKEY AND
LANSDEN & LEEK,
Attorneys for Petitioners.

And on the same day, to wit, on the 10th day of February, A. D. 1892, came the said petitioners, by their attorneys, and file- in said

clerk's office their certain replication, which is in the w-rds and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
County of Alexander, }

In the Circuit Court, Feb. Term, 1892.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.*, &c., *vs.* ILLINOIS CENTRAL RAILROAD COMPANY. } Petition for Mandamus.

And the said petitioners, by their attorneys, John H. Mulkey and Lansden and Leek, came and, as to the paragraphs in the said respondent's answer by it thirdly, eighthly, and ninthly above pleaded, say that they, the petitioners, by reason of anything in those paragraphs or any or either of them alleged, ought not to be barred from having their aforesaid action against the said respondent, because they say that the said fast mail train in the said third paragraph mentioned is a regular passenger train, and because they say that the said respondent does not stop all of its regular passenger trains at the depot on said block one (1), in the city of Cairo, and because they say that the said 88th section of chapter 114 of the Revised Statutes of Illinois did pass the house of representatives of
47 the General Assembly of the State of Illinois, and is not a nullity, and did become a law of this State; and this the petitioners pray may be *re*quired of by the country.

JOHN H. MULKEY AND
LANSDEN & LEEK,
Att'ys for Petitioners.

And afterward, to wit, on the 14th day of May, A. D. 1891, the same being one of the term days of the May term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, &C., *vs.* ILLINOIS CENTRAL RAILROAD COMPANY. } No. 2050. Mandamus.

This day came The People of the State of Illinois, by Messrs. John H. Mulkey and Lansden & Leek, and the said defendant, by Messrs. Green & Gilbert, its attorneys, and said defendant files its demurrer to the petition of the plaintiff-; and the court, having heard the arguments of counsel, sustains the demurrer, and the plaintiff- asks leave to amend their petition, which is granted, and the plaintiff- amends their petition, and the defendant, upon motion granted by the court, is allowed until 9 o'clock a. m. the following Saturday in which to file its answer.

And afterwards, to wit, on the 16th day of May, in the year last aforesaid, the same being one of the term days of the May term of

said court, the following, among other, proceedings were had in said court and entered of record, to wit:

48 THE PEOPLE OF THE STATE OF ILLINOIS, &c., vs. ILLINOIS CENTRAL RAILROAD COMPANY. } No. 2050. Mandamus.

This day came again the parties, by their respective attorneys, and the said defendant, by its attorneys, files its demurrer to the amended petition of the plaintiff-, and the court, having heard the arguments of counsel, overrules the demurrer; and, upon motion of defendant, the rule to answer, heretofore entered, is extended until 9 o'clock a. m. on June 2nd, 1891.

And afterward, to wit, on the 6th day of July, in the year last aforesaid, the same being one of the days of the May term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, &c., vs. ILLINOIS CENTRAL RAILROAD COMPANY. } No. 2050. Mandamus.

This day came the parties, by their respective attorneys, and the said defendant, by its attorneys, files its answer, as required by the court, to which the plaintiff- file their replication; and thereupon the defendant moves to strike the replication from the files; and the court, not being fully advised in the premises, takes the motion under advisement; and, further, the defendant asks leave to amend its answer, which is granted by the court, and the said amendment is filed and this cause is continued generally.

49 And afterwards, to wit, on the 12th day of October, in the year last aforesaid, the same being one of the days of the October term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, &c., vs. ILLINOIS CENTRAL RAILROAD COMPANY. } No. 2050. Mandamus.

This day came the parties, by their respective attorneys, and, upon motion, a change of venue is granted from Hon. Joseph P. Robarts, the judge presiding and holding this court, to Hon. Alonzo K. Vickers, another of the judges of the first judicial circuit, and, also, this cause is set for hearing on Monday next, October 19th.

And afterward, to wit, on the 28th day of December, in the year last aforesaid, the same being one of the days of the October term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, &c., vs. ILLINOIS CENTRAL RAILROAD COMPANY. } No. 2050. Mandamus.

This day came the parties, by their respective attorneys, and the said defendant files its answer to the plaintiffs' declaration; whereupon the said plaintiff files a demurrer to the answer of the defendant and at the same time files a replication to paragraph three of said answer; whereupon the court overrules the demurrer, and the parties electing to abide by the demurrer, issue is made upon the replication, and this cause is set for trial by the 1st day of the February term, 1892, to which time this cause is continued.

And afterward, to wit, on the 8th day of February, A. D.
50 1892, the same being one of the days of the February term of said court, the following, among other, proceedings were had and entered of record, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, &c., vs. ILLINOIS CENTRAL RAILROAD COMPANY. } No. 2050. Mandamus.

And now, on this day, come the petitioner-, The People of the State of Illinois, by Messrs. Lansden & Leek and John H. Mulkey, their attorneys, and the defendant, by Messrs. Green & Gilbert, its attorneys, and on motion of the petitioner- the order heretofore entered overruling the demurrer to the defendant's answer is set aside and the petitioner- given leave by the court to withdraw *its* demurrer and replication to the answer of the defendant; and leave is also granted the petitioner- by the court to file a special demurrer to the defendant's answer; which special demurrer is accordingly filed; whereupon the court sustains the special demurrer as to the first paragraph and all of second paragraph of answer after the figures 1859, and to all of paragraphs fifth, sixth, and seventh. On motion of the defendant, leave is granted to defendant to file an amended answer by meeting of court on Wednesday morning next.

And afterwards, to wit, on the 13th day of February, A. D. 1892, the same being one of the days of the February term of said court, the following, among other, proceedings were had in said court and entered of record, to wit:

THE PEOPLE OF THE STATE OF ILLINOIS, &c., vs. ILLINOIS CENTRAL RAILROAD COMPANY. } No. 2050. Mandamus.

51 And on this 13th day of February, 1892, came again the said parties, petitioners and defendant, by their respective attorneys, and the said defendant files its amended answer to the petition herein; to which amended answer the petitioner- file a special demurrer; which special demurrer is sustained by the court as to the whole of paragraph one and all of paragraph two after the

figures 1859, and to the whole of paragraphs five, six, and seven; to which defendant excepted; whereupon the petitioner- filed *its* replication to paragraph- three, eight, and nine of the defendant's answer; to which replication to the ninth paragraph of the answer the defendant files a special demurrer; which special demurrer is overruled by the court, to which defendant excepted, and the rejoinder to replication is withdrawn; and thereupon, by agreement of parties hereto, jury is waived, and this *sceuse* is submitted to the court for trial upon the issues joined, and the court, having heard the evidence and arguments of counsel and being now fully advised in the premises, on condition thereof, doth find the issues in favor of the said petitioners and against the said defendant. Motion for new trial overruled. Excepted to by defendant.

The court finds from the evidence that the said defendant constructed its railroad and laid down its railroad tracks in the said city of Cairo and established its passenger station or depot on block one (1), at the intersection of Ohio Levee and Second streets, in said city of Cairo, and ran all of its regular passenger trains which came to Cairo down to the said passenger station or depot, as alleged and set forth in the said petition.

The court further finds from the evidence that the said city of Cairo became the county-seat of said Alexander county in the year
52 1859, and that it has ever since remained and now is the county-seat of said Alexander county.

The court further finds from the evidence that the said fast mail trains numbered forty-one (41) and forty-two (42) were put on said railroad by the defendant in the month of July, and that the said south-bound fast mail train numbered forty-one has been continuously and daily since it was first put on and up to the present time, and that it has at no time been run or brought down to the said passenger station in Cairo aforesaid, but it has all that time been run into said city of Cairo and on said bridge in the petition mentioned southward to New Orleans without stopping at all or for any purpose in said city of Cairo.

The court further finds from the evidence that the said north-bound fast mail train number forty-two (42) was for and during a period of three or four months run northward over said bridge and on through said city of Cairo or the upper part thereof without stopping in said city, as averred and set forth in said petition, and that said bridge crosses the Ohio river at a point in said city two miles north of the said passenger station.

The court further finds from the evidence that the said south-bound fast mail train numbered forty-one (41) so put on the said railroad as aforesaid, in July, 1890, was at the time the said petition was filed and now is a regular passenger train of the defendant, and that it has been a regular passenger train from about the time it was put on said railroad up to the present time, and that the said defendant is required by law to run or bring said south-bound fast mail train down to the said passenger station or depot aforesaid, and there to stop the same a sufficient length of time to receive and let off passengers with safety.

53 To which findings of the court and each of them the defendant then and there excepted. The defendant thereupon made its motion for a new trial, which said motion was overruled by the court, to the overruling of which said motion the defendant then and there excepted. It is therefore considered, ordered, and adjudged by the court that the defendant cause the said south-bound fast mail train and all of its other regular passenger trains which came into Cairo at all times hereafter to be run or brought down to the said passenger station or depot of the said defendant, at the intersection of the Ohio Levee and Second streets, in said city of Cairo, and there stopped a sufficient length of time to receive and let off passengers with safety.

It is also ordered and adjudged by the court that a peremptory writ of mandamus issue out of this court, under the seal thereof, directed to the said Illinois Central Railroad Company, its officers, agents, and servants, commanding it and them forthwith and at all times hereafter to cause the said south-bound fast mail train and all other passenger trains of the defendant which come to Cairo, and by whatever name, number, or other designation the said trains may be known or called, to be run or brought down to the said defendant's passenger station or depot, at the intersection of Ohio Levee and Second streets, in said city of Cairo, and there to be stopped a sufficient length of time to receive and let off passengers with safety.

It is further ordered and adjudged that the defendant pay the costs of this action.

To the rendition of which judgment and the entry of which order for a writ of mandamus the defendant then and there excepted.

54 The defendant thereupon prayed an appeal to the supreme court, which is allowed, upon condition that an appeal bond in the sum of three hundred dollars, with security, be filed within thirty (30) days from the date hereof, bond and security to be approved by the clerk, and that the bill of exceptions be presented by the first day of April next.

STATE OF ILLINOIS, } ss:
Alexander County, }

In the Circuit Court of Alexander County, to the February Term, A. D. 1892.

THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of WILLIAM N. BUTLER, State's Attorney, *vs.* THE ILLINOIS CENTRAL RAILROAD COMPANY. } Mandamus.

Messrs. Lansden & Leek & John H. Mulkey, for People, and William H. Green, for the defendant.

Before Hon. Alonzo K. Vickers.

CAIRO, ILLINOIS, *February 10th*, 1892.

Be it remembered that at the trial of this cause at the February term, A. D. 1892, of the above circuit court, the plaintiffs, to maintain the issue on their part, gave the following evidence, to wit:

JOHN H. JONES, called as a witness on behalf of the plaintiffs, was sworn and testified as follows:

Direct examination by JOHN M. LANSDEN:

Q. What is your name?
55 —. John H. Jones.
Q. Where do you reside?
—. I reside in Cairo, Illinois.
Q. How long have you resided in Cairo?
—. About twenty-four odd years.
Q. What business have you been engaged in most of the time?
A. Most of the time I have been railroading.
Q. With what railroad have you been c-nnected?
A. For the last eighteen years I have been with the Illinois Cen. railroad.
Q. In what capacity have you been connected with the Illinois Central railroad?
—. For seventeen years I have been ticket agent at this point on the railroad.
Q. Ticket agent here at Cairo?
—. Yes, sir.
Q. Tell the court whether your office as ticket agent is a general ticket office.
A. In what way, please?
Q. Well, whether or not you sell tickets for all lines of the railroad to all parts of the country?
—. Yes, sir.
Q. How long do you say you have been acting as ticket agent here?
—. Seventeen or eighteen years.
Q. During that time have you been acquainted with the operation of the passenger trains running on the road here?
—. Well, I have more particularly here at our own depot. Of course I cannot say much beyond that.
56 Q. Tell the court what the numbers of the trains which carry passengers are coming from the north southward to the city of Cairo.
—. The number of the trains that carry passengers?
Q. Yes, sir; that carry passengers.
—. Train number 23 in the morning at 9.30. That is the through passenger from Chicago. Train No. 21 gets in here now at 10.40 at night. That is another through train from Chicago this way. Train No. 3 arrives here at 12.50 at night. That is a through passenger train from Chicago also.
Q. Are those all the trains which carry passengers coming from Chicago now?
A. Well, there is a mail train that leaves Chicago in the morning and arrives here at two o'clock in the afternoon, and that also carries passengers from such stations as it stops.
Q. I will come to that more fully after a short time. Q. Have

you given the present numbers of trains that leave Chicago for this end of the road?

—. Yes, sir.

Q. Have those numbers been changed in the last few days?

A. Yes, sir; they were changed ten days ago, probably.

Q. Please give the numbers of all the trains which left Chicago for Cairo or this part of the country which carry passengers prior to the new schedule.

—. No. 1 left Chicago at 8.40 in the morning; that is the old number. The next train leaving there was number 45; that is the old number also; and the next train was No. 3, which left at seven o'clock at night, and the next train that left there left at three
57 o'clock in the morning and was called the fast mail.

Q. What number was that?

—. No. 41.

Q. Has that train leaving Chicago in the morning about three o'clock, called by you the south-bound fast mail train, been 41 all the time up to recently?

A. Yes, sir; up to about ten days ago.

Q. If the company for the last year or two ever had any other fast mail on the road, state what train it was.

A. Do you mean coming from this direction?

Q. No, sir; coming in the other direction.

—. Well, it has a similar train going north. That is No. 42.

Q. The south-bound fast mail was No. 41 and the north-bound fast mail is 42?

—. Yes, sir.

Q. State to the court when these two trains were put upon the road, as near as you can.

—. Well, about the 1st or 5th of July, 1890. Between the 1st and 5th.

Q. When those two trains were put upon the road tell the court whether either of them run into Cairo and down to the station or not.

—. Well, at the time they were first put on there was a short train run from this depot——

Q. I asked you to state whether or not when those two fast mail trains was put on the road first if they came into Cairo and down to the station.

58 A. No; they did not.

Q. Has the south-bound fast mail train No. 41 at any time run down to the station since it was put on?

—. Well at present there is a through car that comes down from Duquoin.

Q. I mean the train as it leaves Chicago?

—. No; they do not.

Q. Have they at any time since that train was put on run down to the station?

—. I think not

Q. How long did the north-bound mail train run upon the road before the company began bringing it down to the station?

Objected to; overruled; exception.

A. I cannot say positive, but my recollection is that the north-bound train came into the station last January, 1891; that is my recollection now.

Q. State to the court whether or not you have been in the habit and do generally sell tickets here at Cairo for all passengers going southward from Cairo on the south-bound fast mail train.

—. *Well*, sell tickets for that train and at the time notify them that it is the east mail.

Q. How long have you been selling passenger tickets for that train?

A. Ever since the train was put on.

Q. After this south-bound fast mail train was first put upon the road, where was the point or station it last stopped before passing over the bridge to go southward?

59 A. I suppose it stopped at Mounds, unless it did stop at Bridge Junction. I cannot say about that.

Q. How far is the Mounds from your office?

—. Between seven and eight miles.

Q. Where is the general passenger depot or station located here in the city of Cairo?

—. On the corner of Levee and Second street.

Q. Has it been at that point ever since you have been connected with that road?

—. Yes, sir.

Q. If the south-bound fast mail train No. 41 heretofore stopped at any point nearer to Cairo than the Mounds, what point was it?

A. At Bridge Junction.

Q. What do you mean by Bridge Junction?

—. It is the approach of the bridge where the main track connects with the bridge.

Q. Is it at the northern end of the northern approach of the bridge?

—. Yes, sir.

Q. How long has that south-bound fast mail train been stopping at the junction—Bridge Junction?

A. I cannot say positively, but probably in the neighborhood of three months. It may be more or less.

Q. Prior to that they stopped at the Mounds?

A. Yes, sir.

Q. How did your company convey its passengers to where it sold tickets for when that train, or before that train, began stopping at Bridge Junction?

60 A. We had a short train that would run from our depot to Mounds for that purpose.

Q. Have you ever gone to Mounds on that short train?

—. I have, a very few times.

Q. You mean to say that you have a few times?

A. Yes, sir; a very few times.

Q. What kind of a train was that the company used to carry its

passengers to make connections with this south-bound mail train at the Mounds?

—. A first-class coach and baggage car.

Q. A first-class coach and baggage car?

A. Yes, sir.

Q. Upon the arrival at the Mounds, now, of this short train what was done as to the transfer from one to the other of these two trains?

A. I was not there often enough to witness that, and I cannot give any definite evidence as to how it was handled.

Q. You do not remember what was done while you were there?

A. Of course I did. I was there. The passengers from our train at Mounds would be transferred to the car that goes to Chicago.

Q. How were the passengers that got off the south-bound fast mail train brought into Cairo?

—. Why, of course, a similar transfer would be made and those come in.

Q. That is, they would leave the passenger coach of the south-bound fast mail train and get into the coach of the short train?

61 A. Yes, sir; and come into Cairo.

Q. Tell the court why it was that that short train was sent up to Mounds to meet that south-bound fast mail?

—. I suppose it was sent up to take the passengers going south and to receive those coming from the north.

Q. When you were at the Mounds, upon the arrival of the south-bound fast mail train, what kind of a train did you take it to be? What kind of cars constitutes the train?

A. The train, when first put on, consisted of a mail and baggage car, and I think one coach from Champaign to Jackson, Tenn. I cannot say. I think when the train was first put on it consisted of a mail car, baggage car, and, I think, one coach from Champaign to Jackson, Tenn.

Q. How long did that arrangement continue? You have stated that it consisted of these three cars mentioned when it was first put on.

A. I cannot say exactly.

Q. Do you know where these three cars came from—these three cars you have mentioned?

A. The mail car and baggage car?

Q. Yes, sir.

A. The mail car came from Chicago, and I think the baggage car and coach was put on at Champaign.

Q. How far is Champaign this side of Chicago?

A. 135 miles.

Q. Describe the baggage car that you have mentioned in this train.

A. I cannot do it, for I never was in the car. I was never in the car.

62 Q. Never in a baggage car.

A. No; not the one you speak of. I suppose it is an ordinary baggage car, though.

Q. I will ask you if it was generally known as a baggage car?

A. It was an ordinary baggage car, I suppose.

Q. To refresh your recollection, I will ask you if this car was not divided up into two parts, and one was used for baggage and the other part for passengers?

A. Are you speaking about when the train was first put on?

Q. Yes, sir.

A. I think not. It is my understanding that it was a straight baggage car at that time, but I never was in it.

Q. Tell whether or not you have come through from Chicago to Cairo on that train?

A. I have not.

Q. Tell the court whether or not you ever rode upon that train north of Mounds?

A. I don't think I have ever rode on it. I don't recollect of ever having been on it at all—that is, coming from any station north of Mounds.

Q. How many passenger trains have been run by this company from Chicago down this way, included this train in controversy, called the south-bound fast mail train?

A. Four, including the fast mail train.

Q. What do you call train No. 45?

A. That is the vestibule. It leaves Chicago at 2 o'clock in the afternoon. That was called No. 45. It is now No. 3.

Q. State to the court whether these four trains—whether any of these trains besides the south-bound fast mail train carries
63 the United States mail or not?

A. I suppose that every train on the road carries mail in different ways.

Q. Do you know whether the trains other than the south-bound fast mail train carries the mail or not?

A. Some trains carries regular mail, but it is in the baggage car.

Q. But they all carry the United States mail?

A. That is my understanding.

Q. What is the difference in the time consumed in the running of the south-bound fast mail train down here to the Bridge Junction and No. 45, the vestibule train?

A. The vestibule leaves Chicago in the afternoon at two o'clock and arrives here at 12.50, and the fast mail leaves Chicago at 3.15 in the morning and arrives here at two o'clock in the afternoon.

Q. What is the difference in time consumed by these two trains in covering the same distance?

A. Well, the vestibule leaves Chicago at two o'clock and arrives here at 12.50; that is ten hours and fifty minutes; and the other train leaves at 2.15 and arrives at 2 p. m., making eleven hours and forty-five minutes.

Q. To refresh your recollection, I will ask you to look at one of the company's time-tables and tell the court whether or not the vestibule train does not run from Chicago to Cairo in as short time as the south-bound fast mail?

A. This card shows three o'clock. This is in August, almost a year ago.

64 Q. Well, I will hand you one later.

A. Well, this same card shows the departure from Chicago at two o'clock in the afternoon and arrives at Cairo at 12.50.

Q. What is the difference in time of the two trains?

A. The difference is about five minutes.

Q. Which one runs it in 10.45 and which in 10.50?

A. The fast mail runs it in 17.45 and the other in 10.50.

By the COURT:

Q. That, then, means the arrival into the station?

A. Yes, sir.

Q. When was the vestibule train put on the road?

A. I think it was in the month of January, 1891.

Q. The last of January, 1891?

A. In the month of January, 1891, some time. I cannot say exactly the date, but I think, though, it was the 11th.

Q. Have you before you a time-table of the company for the running of its trains?

A. Yes, sir; it is a folder, giving the arrival and departure of the trains; yes, sir.

Q. State what that is that you have in your hand.

A. This is what is termed a passenger folder, giving the arrival and departure of trains.

Q. State whether they are issued for the use of the agents by the company.

A. They are issued by the general passenger department.

Q. I wish you would look at that, if you cannot state from your recollection or knowledge, and state the length of time required for the south-bound fast mail train to run from Chicago to New Orleans.

A. About twenty-nine hours.

65 Q. Give the exact time as shown by the table.

A. Well, the fast mail leaves Chicago at 3.15 a. m. and arrives in New Orleans at 8.25 a. m. the 2nd morning.

Q. How much would that make?

A. Twenty-nine hours and thirty minutes.

Q. Give the time required to run the vestibule, or No. 45, from Chicago to New Orleans.

A. On the card it leaves Chicago at 2 p. m. and arrives in New Orleans at 7.30 p. m.

Q. How much would that make?

A. Twenty-nine hours and thirty minutes.

Q. Look a little closer. What is the difference in time of the two trains?

A. About five minutes, I guess.

Q. Since the vestibule was put on in January, 1891, up to the present time, has it run down to the station in Cairo uniformly?

A. Yes, sir; it has.

Q. Then I will ask you if it is true or not true that the vestibule

train runs from Chicago down to the station, and then goes to the same destination, New Orleans, as the fast mail and within five minutes of the time made by the fast mail, which does not come down to the station?

A. According to the schedule, it has.

Q. How do you know that the fast mail train, when first put on by the company, left Chicago with a mail car and a baggage car only?

A. That was my understanding of it at the time.

66 Q. I will ask you how you knew that fact.

A. From information that I had from the transportation department.

Q. You have no personal knowledge of it?

A. No, sir; only information.

Q. To refresh your recollection, I will ask you if at the time the fast mail train was first put upon the road it did not leave Chicago with a mail car and a combination car—that is, a car divided into two sections, one for baggage and one for passengers.

A. Well, I cannot say, for the reason that I never saw the train.

Q. Has that train ever to your knowledge left Chicago with those kind of cars?

A. Why, at any time?

Q. Yes, sir.

A. And the present time?

Q. Yes, sir.

A. At the present time it leaves there with a mail car—a compartment baggage car—one-half baggage and one-half smoker, and a compartment car also. I am now speaking of the present time.

Q. At the present time the fast mail leaves Chicago with three cars?

A. It leaves with a mail car, a half baggage car and smoker, and a compartment car.

Q. Do you know when that compartment car was put on?

A. No, sir; not positive.

Q. What is this compartment car used for in this train?

A. That is used for such passengers that see fit to travel in that train.

Q. What is this compartment car?

67 A. It is a car with a division in it for different classes of people.

By the COURT:

Q. Is it known by any other name than compartment car?

A. That is the name we apply to it. It has a petition in it for first and second class passengers.

Q. Is it ever called a combination car?

A. No; a combination car is a half baggage car and half coach, like I first spoke of.

Q. Is it for use in the Southern States?

A. Yes, sir; that is it exactly.

Q. Can you tell when that was put in?

A. No; I cannot, but it was several months ago. That is all I can say. I don't know exactly when it was put in.

Q. Has it been upon the road a year?

A. No, sir; I think not.

Q. Since the south-bound fast mail has been stopping at Bridge Junction how are the passengers transferred there desiring to go to Cairo and those desiring to leave Cairo on that train?

A. Well, those coming to Cairo from Duquoin, I will say, or points this side are put in what we call the St. Louis car and brought into *our* own depot.

Q. Well, do you send a train up to meet that?

A. We start the train from the depot at 1.20 and connect at the Bridge Junction with the fast mail as it goes over the river.

Q. What does that train that leave- the depot take up?

A. One first-class coach and baggage car.

Q. It goes up with two cars and brings three back, does it?

68 A. It goes up with a baggage car and a first-class coach and brings back with the engine that left Centralia and brings the St. Louis car; also brings back the two cars that I mentioned first.

Q. How are these cars taken up?

A. They are taken up by the engine that goes on over the river. The engine leaves our depot and goes to Bridge Junction, and then on over the river to Jackson, Tenn.

Q. With the fast mail?

A. Yes, sir; that came from Chicago.

Q. How does that engine haul those two cars from the station to Bridge Junction?

A. They are pulled up by the engine backing.

Q. The engine backs up to Bridge Junction with the two cars so as to be in position to attach itself to the fast mail and take it south?

A. That is correct.

Q. And the engine that brought the fast mail to the junction then brings the Duquoin car and the cars that were taken up back?

A. Yes, sir; the entire crew coming from Centralia enters Cairo, engine and all.

By the COURT:

Q. The train from Bridge Junction is brought in by the same crew that brings it down there?

A. Yes, sir.

Q. Before this train began coming down to Bridge Junction to make the transfer, how were the two cars hauled from the station down here or its passengers up to the Mounds to make connection?

A. Why, at that time only two cars were taken out by the engine leaving here.

69 Q. Hauling them in the usual way?

A. Yes, sir; and brought back again.

Q. How did the engine haul those two cars into Cairo?

A. They came in, as we would say, head on—that is, the engine coming in ahead.

Q. Do you mean that the engine was in the usual way?

A. No; I guess I am wrong about that. The engine would go out ahead and back in.

Q. Now, I will ask you, Mr. Jones, if after the fast mail train was first put on and stopped at the Mounds and up to the time it began stopping at Bridge Junction, if connection was not made with it by the hauling of the two cars you have mentioned from the station here to the Mounds, and the hauling those two cars back with the engine running backward?

Objected to. Counsel on both sides agree that all the evidence may go, and that it may be argued on the final argument.

Q. I understood you to say up to the time of the fast mail began stopping at the Bridge Junction the two cars were taken up by the engine to Mounds and the transfer made there, and then the engine backed in with the two cars to the station.

A. Yes, sir; that was previous to the change from Mounds to the Bridge Junction. I cannot say positive, though, just when that St. Louis car was put on.

Q. I will ask you whether or not that is not the case?

A. That was up to the time the change was made at Bridge Junction.

Q. There was two cars taken up to Mounds?

A. Yes, sir; up to the time this change was made at Mounds Junction.

70 Q. That is what I refer to. Up to the time the change was made.

A. Yes, sir; but it is not now.

Q. What do you know with reference to the south-bound fast mail train taking on an additional coach at Duquoin that comes from St. Louis to Cairo?

A. At Duquoin the fast mail took on a coach that came from St. Louis to Duquoin.

Q. How long has it been doing that?

A. I would not be positive, but for several months. I guess it has been about a year ago or 14 months.

Q. I will try and refresh your recollection, Mr. Jones, and ask you if it is not a fact that when the south-bound fast mail train was first put on it ran out of Chicago with two or three cars that you have described and took on no regular passenger coach till it reached Duquoin, and subsequently, Mr. Jones, the same train, the south-bound fast mail train, began taking on a passenger coach at Duquoin?

A. My recollection is that when the fast mail was first put on it left Chicago consisting of a mail car and baggage car, and at Champaign it took on a coach which probably ran to Jackson, Tenn. At that time I think they ran an accom-odation train from Centralia, which same right behind the fast mail and picked up the St. Louis coach at Duquoin and got in a half hour afterwards.

Q. Your recollection is that it took the passenger coach at Champaign and none at Duquoin?

A. Yes, sir.

Q. What do you know, if anything, as to the south-bound fast mail train now taking a passenger coach at Champaign and bringing it southward?

71 A. My recollection now is that the compartment car that I spoke of starts from Chicago.

Q. And that the train takes on a passenger coach at Champaign?

A. That is my understanding.

Q. Where does this train get the two regular passenger coaches that she now brings to Bridge Junction?

A. Well, one is the compartment car that I spoke of as leaving Chicago, and there at Duquoin we get a St. Louis & Cairo first-class coach which is brought into Cairo by a regular train.

Q. The question I asked you is how is it that the train now comes to Mounds or Bridge Junction with two regular passenger coaches?

A. As I said before, when the train leaves Chicago it takes on a mail car and a combination coach and baggage car—that is, half coach and half baggage.

Q. You don't know, then, that this south-bound fast mail train comes to the Bridge Junction with two regular first-class coaches?

A. It is seldom that they have ever come that way up there, and it is my understanding that they leave Chicago with the mail car and the compartment car with a partition in the middle and at Duquoin they pick up a first-class coach.

Q. There seems to be a difference in opinion between myself and Mr. Leek in regard to this train as it leaves Chicago—that is, what cars di- this train have when it began leaving Chicago. What kind of cars were they at first?

A. It is my understanding that it was a baggage car and a mail car only—a mail and baggage car only; that is my understanding.

Q. Was the bagg- car divided into two parts of portions?

A. I think not, but I don't know positive.

Q. Was there any chairs for the carrying of passengers?

72 A. Not at that time.

Q. Well, what car was added to that any time afterward?

A. At Champaign, about six o'clock in the morning, there would put on this coach I speak of, and would run through to Jackson, Tenn.

Q. Well, later on they put on a combination car—that is, half coach and half baggage car? *Q.* That is a compartment car?

A. No; a compartment car is what they call a half baggage and half smoker.

Q. When was that compartment car put on?

A. Some time last summer.

Q. Do you know when the combination car was put on?

A. No, sir; but it was put on afterwards, of course. You see at first there was no place for trainmen to ride except in the baggage car, and afterwards they put on a combination car, which was half

coach and half baggage car and had seats in it. Afterwards they put on the compartment car.

Q. So the combination car was put on after the baggage car?

A. Well, of course the straight baggage car was probably then taken off when the combination car was put on.

Q. What was that combination car put on for?

A. For the accom-odation of the trainmen and such passengers, I suppose, as would probably ride in it.

Q. The passengers were taken from the station in Cairo to the Mounds in what car? In what car did they take the passengers to the south-bound mail train?

A. They were probably put in the car that came from Chicago. Do you mean now, at the present time, or at the first?

73 Q. At first.

A. They were put on that going from Champaign to Jackson, Tenn.

Q. Do you know where the train was accustomed to stop for passengers from Chicago to Cairo?

A. Only at junctions and large cities to throw off the mail.

Q. Look at this card and see if it stopped at Kankakee.

A. Yes; she stopped at Kankakee. That is the junction of several roads there.

Q. Do you know whether that is a county-seat or not?

A. I don't know positively.

Q. Look at Paxton.

A. It stops there because it is a railroad junction.

Q. Do you know whether it is a county-seat or not?

A. No, sir.

Q. Does it stop at Effingham?

A. Yes, sir.

Q. Does it stop at Tuscola?

A. Yes, sir; that is a railroad crossing also.

Q. Look at Odin.

A. Yes, sir; it stops there on account of the crossing of the Ohio & Mississippi railroad.

Q. Where is the next stopping place?

A. Centralia.

Q. Where is the next stopping point?

A. Ashley.

Q. What does it stop there for?

A. Crossing.

Q. Where next?

74 A. Tamaroa; it is the crossing for the Wabash, Chester & Western. The next is Duquoin.

Q. And next?

A. Carbondale.

Q. And next?

A. Anna.

Q. Is there any crossing there?

A. No, sir; there is not.

Q. Where is the next stopping place after it leaves Anna?

A. It is at Mounds.

Q. What road crosses it at Duquoin?

A. The St. Louis, Alton & Terre Haute.

Q. What road at Carbondale?

A. The St. Louis, Alton & Terre Haute, the St. Louis & Paducah division, and also the Grand Tower railroad.

Q. At all places you have mentioned, Mr. Jones, tell the court whether or not the south-bound fast mail train takes on passengers or not.

A. Yes, sir; they take such passengers as see fit to board the train.

Q. Do you know whether the company sells tickets or not for those points on that train?

A. I presume so.

Q. Well, do they sell tickets for those points on the north-bound fast mail train, No. 42?

A. Yes, sir; for Anna, Carbondale, Duquoin, etc.

Q. All these points?

A. Yes, sir.

75 Q. Have you any way of designation the two pages of that folio which shows the schedule when those trains from Chicago leave?

A. Page one, called the Chicago and Cairo line.

Q. There are two pages running clear through?

A. Yes, sir. The next page speaks of the Cairo and New Orleans line.

Q. What pages are those?

A. Pages one and two.

Q. Pages one and two on that folio?

A. Yes, sir.

Q. State again the numbers of the two fast mail trains on that schedule.

A. On the schedule it is No. 41 and No. 42—forty-one south and No. 42 north.

Q. State whether or not all the other trains mentioned in that schedule on those pages are regular passenger trains.

A. Yes, sir; they are regular passenger trains.

Mr. LANSDEN said: I would like to withdraw the question and have that answer stricken out, your honor.

The COURT: It shall be stricken out.

Mr. GREEN: I object to its being stricken out and except to the overruling of my objection.

Q. I will ask you if the north-bound fast mail train is not precisely such a train as the south-bound fast mail train?

A. The same as the south-bound?

Q. Yes, sir.

A. There is a difference in those trains. No. 41 is made up in Chicago with a baggage car and a compartment car and runs to Water Valley, Miss. At Water Valley, Mississippi, the mail

76 car is detached and put to the New Orleans train that leaves

here at 9.30 in the morning. Now No. 42 leave- New Orleans at six o'clock in the evening with one or more sleepers and comes to Water Valley, and one of the sleepers and the mail car is detached, comes on to Cairo, and the balance of the train is brought on here on what we call No. 4.

Q. Well, Mr. Jones, is not No. 42 a fast mail train?

A. Yes, sir.

Q. And corresponds in that respect with No. 41?

A. Yes, sir.

Q. Does the north-bound fast mail train, No. 42, come into Cairo?

A. Yes, sir.

Q. And has all the time, except a very short time at first?

A. I believe it has been coming into Cairo since January, 1891.

Q. Tell the court whether the two trains called No. 41 and 42 are run daily.

A. Yes, sir; every day of the year.

Q. And have been running ever since they were first put on?

A. Yes, sir.

Q. Tell the court whether or not they are run on schedule time or not.

A. They are run on schedule time.

Q. And have been ever since they were started?

A. Yes, sir; all trains are run on schedule time.

Q. You say, as I understand you, that it was about three months ago that the south-bound fast mail train began coming down to Bridge Junction?

A. I think about that time.

77 Q. And up to that time you made connections with the south-bound fast mail train by taking these two cars to Mounds Junction and bringing them back with the same engine?

A. Yes, sir; up to that time.

Q. And you say when the train came to Bridge Junction the engine that brought them there brought back the two cars?

A. When that change was made the engine that brought them to the Bridge Junction and the crew brought them into Cairo.

Cross-examination by WILLIAM H. GREEN:

Q. I will ask you to refresh your recollection as to the time of the regular passenger train that is called the vestibule; when does it leave Chicago?

A. Two o'clock in the afternoon.

Q. From two o'clock in the afternoon till two o'clock the next afternoon is twenty-four hours?

A. Yes, sir.

Q. When did it get to New Orleans?

A. 7.30.

Q. Then it would be twenty-nine hours and thirty minutes, would it?

A. Twenty-nine hours and thirty minutes.

Q. The fast mail train left Chicago when?

A. At 3.15 in the morning.

Q. To 3.15 the next morning would be twenty-four hours?

A. Yes, sir.

Q. When did it get to New Orleans?

A. 8.15 a. m.

Q. That would be twenty-nine hours and ten minutes?

A. Yes, sir; that is correct. I said twenty-nine hours and
78 five minutes before.

Q. Then, is it not true that the fast mail train makes the journey from Chicago to New Orleans twenty minutes sooner than the vestibule?

A. According to the schedule and our figures, it would.

Q. The figures are correct?

A. Yes, sir.

Q. Twenty minutes faster?

A. Yes, sir.

Q. Do you know that there is a contract with the Government by which the Illinois Central Railroad Company is bound to run this fast mail train faster than any passenger train?

Objected to for the reason that it is not responsive to the examination-in-chief. Sustained and exception.

Q. Mr. Jones, I will ask you to state to the court if the fast mail train is not different from regular passenger trains in this respect: That it does not make any provision for feeding passengers between Chicago and New Orleans, either by it stopping for meals or by having buffet cars or by having a dining car?

Objected to; sustained; exception.

Q. I will ask you, Mr. Jones, if it is true, and you can make the statement, not by answering yes, sir, but state whether or not train No. 41, the fast mail train, it is now called No. 1.

A. Yes, sir; that is correct. What was No. 41 is now called No. 1.

Q. I will ask you to state again, in as plain a manner as you can, all about the fast mail train, formerly called No. 41, telling how the same is started from Chicago and what it has in the train from Chicago to Duquoin, and what it had for several months past, and what it couples onto at Duquoin, and what is done with
79 any portion of the train at Bridge Junction. State that all in your own way.

A. At first the train started out of Chicago at 3.15 a. m., and consisted of a mail car, combination baggage car, and a compartment car.

Q. But you did not say what train that was.

A. It was train No. 41 and train No. 1 now. Train No. 1 now, which was No. 41, started from Chicago at 3.15 a. m. with the equipment described above, and that train makes no stops whatever except to put off mail and at railroad crossings. It does not stop anywhere for breakfast, and arrives at Centralia at 9.30 or 10 o'clock, and there changes engines. From Centralia they make the run to

Duquoin, and there take on a first-class coach from St. Louis, which is brought through to Cairo by the same engine leaving Centralia. At Bridge Junction the portion of the train leaving Chicago is coupled with a new engine and taken south over the bridge.

Q. What does that portion of the train which is coupled onto a new engine and is taken south over the bridge consist of?

A. It consists of the part that left Chicago at 3.15 in the morning, and there is no stop made anywhere, only for mail, till they get to Holly Springs.

Q. What is that train called?

A. It is now called No. 1.

Q. What is the name in common parlance?

A. The fast mail.

Q. What becomes of that portion of the train coming from Duquoin with the passengers for Cairo and the baggage for
80 Cairo and the mail for Cairo after the other portion of the train goes south?

A. That part of the train is brought into Cairo from Bridge Junction.

Q. What engine brings it in?

A. The engine leaving Centralia, and the same train crew.

Q. When a passenger wants to go south on this train that is called the fast mail train, what is the custom as to explaining to them the accom-odations that it has?

A. We explain to them that they have got to change cars at Bridge Junction first, and if they are going to New Orleans we discourage them from taking that train, as it has not the proper accom-odations.

—. Is there any preparation made in this compartment car that you have been asked about for the accom-odation of ladies to form their toilet?

A. There is no toilet-room in that car—just an ordinary water-closet.

Q. I will ask you again to state what became of this fast mail train at Water Valley?

A. At Water Valley the mail car is detached and couples onto No. 3, that leaves here at 9.50 in the morning.

Q. Where does it go then?

A. To New Orleans.

Q. What becomes of that engine and baggage car that went that far with the mail train?

A. I don't know anything about it, but I suppose they remain there till next morning and go back on No. 42.

Q. You were asked if No. 41 and No. 42 were not the same kind of trains.

81 A. Yes, sir.

Q. I will ask you to state if they are similar in any respects, except that the- are fast mail trains.

A. Well, leaving New Orleans 42 is a much different train from No. 41, as No. 42 has one or more sleeping cars to it—one for St. Louis and one for Kansas City. It has a through St. Louis sleeper, and leaves New Orleans about six o'clock in the evening.

Q. Do you know whether there is a coach in addition to the sleeper for St. Louis on what was formerly forty-two?

A. I presume there is a coach up to Water Valley.

Q. You do not know?

A. No; I do not. I know the train has a sleeping car, for I see it every day.

Q. At this point you also put in a St. Louis coach, do you not, Mr. Jones?

A. Yes, sir.

Q. I will ask you if you know of your own knowledge the difference in the schedule of what was formerly forty-one and forty-two?

A. There is very near an hour's difference.

Q. State which one has the longest time.

A. Forty-two.

Q. That No. 42 is the north-bound fast mail?

A. Yes, sir.

Q. I will ask you to state again, please, if you can, what accom-odations there are for such passengers as insist on going on No. 41 from Cairo to Bridge Junction?

A. There is a first-class coach left here.

Q. What becomes of the engine that takes the coach out?

82 A. That goes over the bridge to Jackson, Tenn.

Q. Does it go by itself?

A. It takes that portion of forty-one that leaves Chicago.

Q. And goes south with it, do you mean?

A. Yes, sir; that engine that leaves here couples onto that train at Bridge Junction and takes it on south.

Redirect examination by JOHN M. LANSDEN:

Q. Do you mean to tell the court, Mr. Jones, that the south-bound fast mail train, when it comes to the Bridge Junction, passes over the bridge just as it left Chicago with the same cars?

A. I guess it does. Yes, sir; with the same equipment.

Q. You tell the court that it left Chicago with a regular passenger coach?

A. It left Chicago with a regular passenger coach. It left Chicago with a compartment car.

Q. Now do you desire us to understand you that it left Chicago with a regular passenger coach? Is that what you mean—the coach had seats and all for passengers?

A. The train left Chicago with a compartment car—that is, with a partition in the middle.

Q. You say that it passes over the bridge and goes southward in the same condition it left Chicago?

A. Yes, sir.

Q. Don't you know that when that train passes over the bridge it takes a regular coach in addition to the other cars that it has when it leaves Chicago?

A. No, sir; I think not. I know it did not. It passes

83 over the bridge just the way it left Chicago. That is the way I understand it.

Exhibit A 1 J H Jones

ILLINOIS CENTRAL R. R.

CHICAGO and CAIRO LINE.

45	41	37	5	3	1	M	STATIONS.	2	4	6	38	42	46
P.M	A.M	P.M	P.M	P.M	A.M.		Lv. Ar.	P. M.	A.M.	A. M.	A M.	A.M.	P.M
2.00	8.15	4.05	4.30	8.00	8 30	0	Chicago, C. Dep.	7.20	7.20	9.55	9.05	12.20	4.45
2.08	.....	4.13	4.41	8.08	8.38	2	Chicago, 22d St.	7 11	7.11	9.42	8.57	.....	4.37
2 13	.....	4.18	4.47	8 13	8.43	4	Chicago, 39th St.	7.07	7.07	9.33	8.52	.....	4.32
x2.20	.....	4.25	4.54	8.20	8.50	6	..Hyde Park..	$ 7.00	$ 7.00	9.21	8.45	.....	$4.25
2.25	3.40	4.30	5 02	8 27	8.58	9	Grand Cr'g.	6.53	6.53	9.13	8.40	11.55	4.20
x2 35	3.50	4 40	5 15	8.40	9 15	14	Kensington	6.40	6.40	9.00	8.30	11.45	$4.10
.....	.....	.....	5.24	.....	.....	17	...Riverdale...	.....	.....	8.52	.....	.....	.....
.....	.....	.....	5 30	.....	* 9.28	20	....Harvey....	* 6.26	.....	8.46	.....	.....	.....
.....	.....	.....	5.37	.....	9.37	23	...Homewood..	6.18	$ 6.15	8.39	.....	.....	.....
.....	.....	5.06	5 43	9.08	9.47	28	....Matteson	6 10	6.05	8 29	8.05	.....	.....
.....	.....	.....	6 51	.....	* 9.50	29	....Richton....	* 6.08	.....	8.25	.....	.....	.....
.....	.....	5.17	6.08	9.30	9.59	34	.....Monee.....	5 57	* 5 53	8.14	7.53	.....	.....
.....	.....	5.28	6 15	9 32	10.11	40	....Peotone....	5.46	5.38	8 01	7.42	.....	.....
.....	.....	5.40	6 28	* 9.43	10.23	47	...Manteno....	5 35	§ 5.25	7.48	7.32	.....	.....
.....	.....	.....	6.39	.....	*10.38	51	.....Tucker.....	* 5 27	§ 5.17	7.40	.....	.....	.....
3 45	4.55	6.00	6.50	10.05	10.45	56	..Kankakee..	5.15	5 03	7.30	7.15	10.35	3.03
3 45	4.55	P.M	6.55	10.10	10.50	56	..Kankakee..	5.15	5.03	7.2[illegible]	A.M.	10 35	3.00
3.58	5.02	.....	7.04	10.28	10.59	60	.....Otto.....	5.07	.....	7.16	.....	.....	.....
.....	.....	.....	7.13	*10.35	11.07	64	...Chebanse...	4 58	§ 4.41	7.08	.....	.....	.....
.....	.....	.....	7 22	*10.45	11 17	69	....Clifton....	4 48	§ 4 30	6 59	.....	.....	.....
.....	.....	.....	7.28	*10.53	11.24	73	....Ashkum....	4.40	§ 4.22	6.52	.....	.....	.....
.....	.....	.....	7.37	*11.02	11.32	77	...Danforth...	4.32	§ 4 13	6.43	.....	.....	.....
4.23	5.35	.....	7.45	11 10	11.45	81	....Gilman....	4.23	4.05	6.35	.....	9.52	2.21
.....	.....	.....	P.M	*11.17	11.52	85	.....Onarga.....	4.12	* 3.49	A.M.	.....	.....	.....
.....	.....	.....	.....	*11.25	*11.58	87	...Del Rey...	* 4.07	* 3.40	.....	.....	.....	.....
.....	.....	.....	.....	*11.35	12.08	93	....Buckley....	3.58	* 3.28	.....	.....	.....	.....
.....	.....	.....	.....	*11.47	12.19	99	.....Loda.....	3.48	* 3.15	.....	.....	.....	.....
4.56	6.12	.....	.....	11.57	12.28	103	....Paxton....	3.42	3.05	.....	.....	9.14	1.46
.....	.....	.....	.....	*12.05	12.36	108	....Ludlow....	3.30	* 2.50	.....	.....	.....	.....
5.13	6.29	.....	.....	12.19	12.48	114	....Rantoul....	3.20	2.38	.....	.....	8.54	1.28
.....	.....	.....	.....	*12.27	12.58	119	..Thomasboro..	3.12	* 2.27	.....	.....	.....	.....
.....	.....	.....	.....	.....	* 1.13	122	....Leverett....	* 3.03	.....	.....	.....	.....	.....
x5.35	6.50	.....	.....	12.45	d 1.22	128	.Champaign..	2.55	2.05	.....	.....	8.30	D1.05
5.55	6.55	.....	.....	12.50	1.40	128	.Champaign..	d 2.35	2.00	.....	.....	8.27	12.40
.....	.....	.....	.....	*12.57	* 1.47	132	.....Savoy.....	* 2.25	* 1.51	.....	.....	.....	.....
6.10	7.10	.....	.....	1.07	1.57	137	....Tolono....	2.15	1.42	.....	.....	8.12	12.24
.....	.....	.....	.....	* 1.15	* 2.07	142	....Pesotum....	* 2.07	* 1.32	.....	.....	.....	.....
.....	.....	.....	.....	* 1.25	* 2.14	145	.....Hayes.....	* 1.57	.....	.....	.....	.....	.....
6.28	7.30	.....	.....	1 34	* 2.22	150	...Tuscola...	1.48	1.17	.....	.....	7.50	12.04
.....	.....	.....	.....	.....	* 2.30	154	.....Galton.....	* 1.40	.....	.....	.....	.....	.....
6.41	7.43	.....	.....	1.52	2.37	158	....Arcola....	1.33	12.57	.....	.....	7.40	11.52
.....	.....	.....	.....	* 2.04	2.47	163	...Humboldt...	1.22	*12.43	.....	.....	.....	.....
.....	.....	.....	.....	.....	* 2.55	167	Doran's Cross'g	* 1.15	.....	.....	.....	.....	.....
7.03	8.06	.....	.....	2.23	3.07	172	...Mattoon...	1.05	12.25	.....	.....	7.16	11.27
.....	.....	.....	.....	* 2.39	* 3.22	179	.....Aetna.....	*12.48	*12.07	.....	.....	.....	.....
*7.25	8.24	.....	.....	* 2.48	3.31	184	.....Neoga.....	12 39	*11.59	.....	.....	6.57	*11.07
.....	.....	.....	.....	* 3.03	3.44	191	.....Sigel.....	12.25	*11.45	.....	.....	.....	.....
7.47	8.47	.....	.....	3.20	4.00	199	..Effingham..	12.10	11.30	.....	.....	6 35	10.43
7.47	8.47	.....	.....	3.20	4.05	199	..Effingham..	11.59	11.05	.....	.....	6.35	10.43
.....	.....	.....	.....	* 3.35	4.23	206	.....Watson.....	11.42	10.45	.....	.....	.....	.....
.....	.....	.....	.....	* 3.48	4.38	211	.....Mason.....	11.27	10.30	.....	.....	.....	.....
*8.12	9.12	.....	.....	3.54	4.47	214	..Edgewood..	11.20	10.22	.....	.....	6.09	*10.17
.....	.....	.....	.....	* 4.08*	4.55	218	.....Laclede.....	*11.10	10.13	.....	.....	.....	.....
.....	.....	.....	.....	4.13	5.06	223	.....Farina.....	10.58	9.58	.....	.....	.....	.....
.....	.....	.....	.....	4.25	5.20	229	...Kinmundy...	10.42	9.42	.....	.....	.....	.....
.....	.....	.....	.....	* 4.35	* 5.36	233	.....Alma.....	*10.30	9.30	.....	.....	.....	.....
.....	.....	.....	.....	* 4.47	* 5.48	239	.....Tonti.....	*10.15	9 15	.....	.....	.....	.....
8.57	10.02	.....	.....	4.58	5.58	244	.....Odin.....	10.02	9 00	.....	.....	5.18	9.27
8.57	10.02	.....	.....	4.58	5.58	244	.....Odin.....	10.02	8.57	.....	.....	5.18	9.27
.....	.....	.....	.....	* 5.10	* 6.10	251	..Central City..	* 9.33	* 8.38	.....	.....	.....	.....
9.10	10.15	.....	.....	5.15	s 6.15	252	..Centralia..	9.30	8.35	.....	.....	5.05	9.15
9.15	10.20	.....	.....	5.20	6.55	252	..Centralia..	b 5.00	s 8.15	.....	.....	s 4.50	b8 55
.....	.....	.....	.....	* 5.32	6.50	258	...Irvington...	4.47	* 8.02	.....	.....	.....	.....
.....	.....	.....	.....	* 5.40	7.00	263	...Richview...	4.33	* 7.52	.....	.....	.....	.....
9.38	10.45	.....	.....	5.46	7.07	266	....Ashley....	4.32	7.45	.....	.....	4.29	8.32
.....	.....	.....	.....	* 5.54	* 7.15	269	.....Radom.....	* 4.21	* 7.37	.....	.....	.....	.....
.....	.....	.....	.....	* 6.02	7.30	274	....Du Bois....	* 4.15	* 7.30	.....	.....	.....	.....
*1000	11.08	.....	.....	6.12	7.40	280	...Tamaroa...	4.03	7.15	.....	.....	4.08	*8.10
.....	.....	.....	.....	* 7.55	7.55	287	....St. Johns....	* 3.48	* 6.58	.....	.....	.....	.....
10 15	11.25	.....	6.30	7.58	7.58	288	..Du Quoin..	3.45	6.55	.....	.....	3.55	7.55
10.25	11.30	.....	6.35	7.58	7.58	288	..Du Quoin..	3.35	6.55	.....	.....	3.45	7.55
.....	a11.42	.....	* 6.50	* 8.11	8.11	295	.....Elkville.....	* 3.17	* 6.35	.....	.....	f 3.31	.....
.....	a11.53	.....	* 7.03	8.23	8.23	302	.....De Soto.....	3.01	* 6.20	.....	.....	f 3.17	.....
11.00	12.04	.....	7.22	8.40	8.40	308	.Carbondale	2.46	6.07	.....	.....	3.05	7.22
.....	a12.15	.....	7.41	8.56	8.56	316	....Makanda....	2.25	5.48	.....	.....	f 2.48	.....
.....	a12.31	.....	7.55	9.10	9.10	323	.....Cobden.....	2.07	5.33	.....	.....	f 2.35	.....
*1137	*12.40	.....	8.07	9.21	9.21	329	.....Anna.....	1.55	5.22	.....	.....	f 2.25	6.48
.....	a12 57	.....	8.27	9.38	9.38	338	.....Dongola.....	1.32	5.02	.....	.....	f 2.08	.....
.....	a 1.02	.....	8.33	9.45	9.45	341	.....Wetaug.....	1.23	4.55	.....	.....	f 2.02	.....
.....	a 1.08	.....	8.41	9.52	9.52	344	.....Ullin.....	1.14	4.47	.....	.....	f 1.55	.....
.....	a 1.17	.....	8.50	10.02	10.02	349	.....Pulaski.....	1.03	4.37	.....	.....	f 1.47	.....
.....	a 1.23	.....	8.58	10.09	10.09	353	..Villa Ridge..	12.53	4.27	.....	.....	f 1.40	.....
12.23	1.30	.....	9.05	10.15	10.15	356	.....Mounds.....	12.45	4 20	.....	.....	1.35	6.05
.....	.....	.....	.....	.....	.....	361	..Bridge Junc..	.....	.....	.....	.....	.....	.....
12.50	2.00	.....	b 9.30	10.40	10.40	365	.....Cairo.....	12.20	3.55	.....	.....	1.10	5.40
A.M	P.M.	.....	A.M.	P.M.	A.M.		Ar. Lv.	A.M.	P.M.	.....	.....	P.M.	A.M.

No. 1 daily, except Sunday, from Chicago to Centralia, and daily from Centralia to Cairo. Nos. 5, 6, 37, and 38, daily, except Sunday. No. 2 daily from Cairo to Centralia, and daily, except Sunday, from Centralia to Chicago. Nos. 3, 4, 41, 42, 43, 44, 45, and 46 daily.

b—Breakfast. d—Dinner. s—Supper.

x Stop only on signal to receive passengers for stations at which this train makes regular stops.

* Stop only to leave or on signal to receive passengers.

§ Stops only to leave passengers.

Train No. 43, "The Diamond Special" for St. Louis leaves Chicago daily at 9.00 p. m. See schedule, page 4.

Train No. 44, "The Diamond Special" from St. Louis arrives Chicago daily at 7.45 a. m. See schedule, page 4.

a Stops only to leave passengers from Cairo Short Line. f Stops only to receive passengers for Cairo Short Line.

Trains Nos. 1 and 2 will stop at Fernwood and Sutton's Mills when flagged or [illegible]

- Page 84 - No. 214 -

Exhibit-a 2 J. H. Jones.

ILLINOIS CENTRAL R. R.

CAIRO AND NEW ORLEANS LINE.

45	41	5	8	1	M.	STATIONS.	2	4	42	46
PM									AM	PM
2.00	3.15AM	.....	8 00PM		0	Lv....Chicago...Ar	7.20PM	7.20AM	12.20	4.45
1.10	.....	6.25PM	9 50AM		365	Lv..Cairo Depot..Ar	11 59 "	3.55PM	d1250	5.30
1.25	1.45PM	6.40 "	10.05 "		361	" ..Bridge Junc. "	11 44 "	3 20 "	12.35	5.15
1.35	1.55 "	6 50 "	10 15 "		368	" ....East Cairo.. "	11.34 "	3.10 "	12.25	5.05
.....	.....	7.02 "	10.24 "		370	" ....Wickliffe.... "	11.23 "	2.59 "	.....	.....
.....	.....	7.23 "	10.40 "		378	" ....Bardwell.... "	11.05 "	2.40 "	12.01	.....
.....	.....	7.54 "	11.10 "		393	" ....Clinton .... "	10.35 "	2.07 "	11.38	.....
2.50	3.10 "	8.30PM	11 40 "		409	Ar { ..Fulton.. } Lv	10.05PM	1 35 "	11.13	3.49
2.55	3.10 "	Ar	11 45AM		409	Lv { ..Fulton.. } Ar		d1.05 "	11.13	3.49
3.14	3.29 "		12 15PM		421	" .....Martin....Lv		12 40 "	10.51	3.29
.....	.....		†1235 "		428	" .....Sharon..... "		†1230PM	.....	.....
.....	.....		1.05 "		440	" ....Bradford.... "		1.55AM	.....	.....
4.08	4.18 "		d1.32 "		451	Ar { ....Milan.. } Lv		11.27 "	9.59	2.32
4.08	4.18 "		1.52 "		451	Lv { ....Milan.. } Ar		11.27 "	9.59	2.32
.....	.....		2.12 "		460	" .....Medina....Lv		11 08 "	.....	.....
4.57	5.05 "		2.57 "		474	Ar { Jackson, T } Lv		10.30 "	9.10	1.40
4.57	5.05 "		2.57 "		474	Lv { Jackson, T } Ar		10.30 "	9.10	1.40
.....	.....		†3.25 "		486	" .....Medon....Lv		†1003 "	.....	.....
.....	.....		3.45 "		495	" .....Toons..... "		9.43 "	.....	.....
5.55	.....		†4.02 "		502	" .....Bolivar..... "		9.26 "	.....	12.46
.....	.....		†4.16 "		509	" ....Middleburg.. "		†9.10 "	.....	.....
.....	.....		4.25 "		513	" ....Hickory Val'y "		9.02 "	.....	.....
6.32	6.32 "		4.45 "		521	Ar { Grand Jc. } Lv		8.44 "	7.40	12.11
6.32	6.32 "		4.55 "		521	Lv { Grand Jc. } Ar		8.44 "	7.40	12.11
.....	.....		5.11 "		527	Ar Mich. C'y, Mis. Lv		8.30 "	.....	.....
.....	.....		†5.30 "		533	" .....Lamar..... "		†8.16 "	.....	.....
.....	.....		†5.43 "		538	" ....Hudsonville.. "		†8.05 "	.....	.....
b7.22	7.20 "		s6.05 "		546	Ar { Holly Sp's } Lv		7.47 "	6.52	11.37
7.42	7.35 "		6 30 "		546	Lv { Holly Sp's } Ar		b7.27 "	b6.37	11.37
.....	.....		6.52 "		554	" ....Waterford..Lv		7.05 "	.....	.....
.....	.....		7.20 "		565	" .....Abbeville .. "		6.38 "	.....	.....
.....	.....		7.47 "		575	" .....Oxford..... "		6.15 "	.....	10.35
.....	.....		8.07 "	AM	583	" .....Taylors..... "		5.55 "	.....	.....
9.15	9 05 "		8.30PM	6.30	592	" ..Water Valley "	7.45PM	5.32AM	5.12	10.04
.....	9.33 "			7.00	606	" ..Coffeeville.. "	7.16 "		4.37	
.....	†9.48 "			7.15	613	" ..Torrance.... "	7.00 "		†4.22	
10 14	10.05 "			7 33	621	Ar { ..Grenada.. } Lv	6.42 "		4.08	9.04
10.14	10.10 "			7.33	621	Lv { ..Grenada.. } Ar	6.42 "		4.05	9.04
.....	†1033 "			7.58	632	" ....Duck Hill...Lv	6.16 "		†3.41	.....
10.56	10.55 "			8.22	644	" .....Winona..... "	5.50 "		3.18	8.19
.....	11.16 "			8.44	654	" .....Vaiden..... "	5.28 "		†2.58	.....
.....	†1136 "			9 05	664	" .....Wests..... "	5 05 "		†2.38	.....
11.52	11.55 "			9.26	674	Ar.....Durant...Lv	4.43PM		2.20	7.20
	9.00AM				674	Lv....Durant....Ar			7.00	
	10.00 "				686	Ar..Lexington..Lv			6.05	
	11.20AM				709	Ar.....Tchula....Lv			5.00	
	4.00AM				674	Lv....Durant....Ar				7 13
	4.56 "				695	Ar...Kosciusko.Lv				6 14
	b6 40 "				727	" ...Ackerman... "				4.48
	7.53 "				752	" ...Starkville.. "				3.41
	8.30 "				766	" ..West Point.. "				3.01
	9.17AM				783	Ar...Aberdeen...Lv				2.15
11.52	11.55PM			9.25	674	Lv....Durant....Ar	4.43PM		2.20	7.20
.....	†1212AM			9 43	681	" ....Goodman....Lv	4.25 "		†2.03	.....
.....	†1227 "			9 57	688	" .....Pickens..... "	4.09 "		†1.50	.....
.....	†1241 "			10.11	695	" ....Vaughans .. "	3 55 "		†1.36	.....
1.05	1.15 "			10.45	709	" .....Canton .... "	3 25 "		1.10	6.15
.....	.....			†1059	716	" .....Calhoun.... "	†3.00 "		.....	.....
.....	.....			11.07	730	" .....Madison.... "	†2.51 "		.....	.....
.....	†1.37 "			†1115	725	" .....Tugaloo..... "	†2.41 "		†1242	.....
d1.45	2.00AM			11.30	732	Ar.Jackson, Miss. Lv	2.25PM		12.20	5.30
	8.00AM				732	Lv.Jackson, Miss. Ar			8 25	
	8.55 "				751	Ar.....Flora....Lv			7.33	
	9.16 "				759	" ....Bentonia... "			7 12	
	9.27 "				763	" .....Anding.... "			7.01	
	9.48 "				770	" .....Valley .... "			6.41	
	10.10 "				777	" ..Yazoo City.. "			s6.20	
	11.40AM				805	" .....Tchula.... "			4.32	
	12†17PM				815	" .....Cruger.... "			†3.58	
	12.38 "				821	" .....Sidon..... "			3.37	
	1.05PM				830	Ar. Greenwood .Lv			3.10	
2.05	2.05AM			11.30	732	Lv.Jackson, Miss. Ar	d2.05PM		12.15	d5.10
.....	.....			†1152	741	" .....Byram.... Lv	†1.44 "		.....	.....
.....	†2.42 "			12.07	.....	" .....Terry..... "	1.30 "		†1140	.....
.....	3.03 "			12.27	756	" .Crystal Spr'gs "	1.10 "		11.23	.....
.....	3.28 "			12 47	766	" ...Hazlehurst.. "	12.47 "		11.00	.....
.....	.....			†1259	771	" ..Martinsville.. "	†12†4 "		.....	.....
.....	†3.52 "			†1.10	776	" ..Beauregard.. "	†1222 "		†1040	.....
.....	3.56 "			1 14	777	" .....Wesson..... "	12.17 "		10.37	.....
.....	.....			†1 22	782	" ..Montgomery.. "	†1206PM		.....	.....
3.37	4.16 "			1 33	786	" ..Brookhaven.. "	11.55AM		10.18	3.37
.....	†4.38 "			†1.55	796	" .Bogue Chitto. "	11.30 "		†9.55	.....
.....	5.05 "			2 19	807	" .....Summit..... "	11.03 "		9.32	.....
4.20	5.20 "	5.30AM		2 25	810	" ..McComb City.. "	10.55 "	9.00PM	9.25	3.00
.....	.....	5.45 "		2.45	817	" ..Magnolia.... "	10 35 "	8.45 "	.....	.....
.....	.....	†557 "		†3.01	823	" .....Chatawa.... "	†1022 "	†8.50 "	.....	.....
.....	.....	6.05 "		3.11	827	" .....Osyka..... "	10.14 "	8.21 "	.....	.....
.....	.....	.....		.....	832	" .....Kentwood.... "	.....	.....	.....	.....
.....	.....	6.25 "		3 33	836	" .Tangipahoa, La "	9.53 "	7.59 "	.....	.....
.....	.....	†639 "		†3.48	842	" .....Arcola..... "	†9.40 "	†7.45 "	.....	.....
.....	.....	6.47 "		3.58	846	" .....Amite..... "	9.32 "	7 37 "	.....	.....
.....	.....	†700 "		†4.13	853	" ..Independence "	†9 20 "	†7.22 "	.....	.....
.....	.....	†710 "		†4.23	857	" .....Ticktaw.... "	†9 11 "	†7.12 "	.....	.....
5.00	6.47 "	7.20 "		4.35	862	Ar { Hammond } Lv	9.00 "	7.00 "	7.45	1.30
5.55	6.53 "	7.25 "		4.40	862	Lv { Hammond } Ar	8.55 "	6.55 "	7.40	1.25
.....	.....	7.34 "		4.52	867	" ..Ponchatoula..Lv	8 45 "	6.46 "	.....	.....
.....	.....	7.55 "		†5.15	877	" .....Manchac..... "	8 25 "	6.20 "	.....	.....
.....	.....	8.52 "		6 19	905	" .....Kenner..... "	7.25 "	5.14 "	.....	.....
7.80	8.25AM	9.15AM		6.45	915	Ar. New Orleans. Lv	7.00AM	4.50PM	6.00	12.01

Trains Nos. 1 and 2 will stop at Fernwood and Sutton's Mills when flagged, or to let off passengers.

Trains on the Yazoo Branch run daily except Sunday. All other trains run daily. Nos. 45 and 46 have through Sleeping cars between Cairo and New Orleans. Trains Nos. 2, 5, and 6 will stop at Fernwood and Roscland when flagged, or to let off passengers.

Chicago and New Orleans Sleeper, which forms a part of train No. 3 to Water Valley, is there turned over to train No. 41, reaching New Orleans 8.25 a. m.

New Orleans and Chicago Sleeper, which leaves New Orleans on train No. 42, is turned over to train No. 4 at Water Valley.

No. 41 will stop at all stations shown in this schedule, between McComb City and New Orleans, to leave passengers. No. 42 can be flagged at all stations between McComb City and Cairo to take on passengers for St. Louis.

Nos. 41 and 42 will stop Sundays at the following stations to leave and on signal to receive passenger; Kenner, Manchac, Ponchatoula, Independence, Amite, Arcola, Tangipahoa, Kentwood, Osyka, Chatawa, and Magnolia.

b Breakfast. d Dinner. s Supper. † Flag Station.

Q. Are you able to say that you do not bring to the Bridge Junction two regular coaches, one of which is brought to Cairo and the other to Water Valley or Jackson, Tenn.?

A. My understanding is, there was not. My understanding is that it consisted of a combination baggage car and a compartment coach.

Q. I am asking you about the coach, not about the compartment car and combination baggage car.

A. The coach from Duquoin was detached, I think, at Bridge Junction.

Q. Do you tell the court that two straight coaches is not brought to Mounds or Bridge Junction?

A. There is one straight coach that comes from St. Louis that is brought here to Cairo, and the other is what they call a compartment car, with a partition in the middle.

Q. Tell the court whether or not the south-bound fast mail does not stop at points south of Duquoin where there are passengers from St. Louis.

A. My understanding is that if a passenger from St. Louis holds a ticket for any intermediate place they will stop and put them off.

Q. Passengers holding tickets from St. Louis to intermediate points between Duquoin and Cairo will be put off?

A. Yes, sir; that is my understanding of it.

By the COURT:

Q. The points between Duquoin and Mounds?

A. Yes, sir; if they hold tickets coming from St. Louis.

Q. Then it might be, might it not, that the south-bound fast mail would stop at every station from Duquoin to Mounds?

A. Well, that would depend if they were coming from St.
84 Louis and held tickets to these points.

Q. State to the court if the company does not advertise that it will carry passengers—St. Louis passengers—for all points south of Duquoin.

A. Well, I cannot say that I ever saw an advertisement of that kind, but I understand that they will be put off if they hold tickets from St. Louis to those points.

Q. They have got to hold tickets for that point?

A. Yes, sir.

The folder of the Illinois Central Railroad Company, pages one and two, identified by Mr. Jones, marked "Exhibit A," dated December 20th, 1891, is offered and admitted in evidence, the same being in the words and figures as follows, to wit:

(Here follows time-table, p. 84.)

85 C. L. HILLEARY, called as a witness on behalf of the plaintiff-, was sworn and testified as follows:

Direct examination by JOHN M. LANSDEN:

Q. State your name to the court.
A. C. L. Hilleary.
Q. Where do you live?
A. I live in Cairo.
Q. How long have you lived here?
A. Thirteen months now.
Q. In what business are you engaged?
A. I am passenger agent for the Big Four.
Q. How long have you held that position?
A. I have been with them for two years.
Q. How long have you been in the employ or connected with the railroad business?
A. Since 1877, sir.
Q. You are acquainted to some extent with the Illinois Central railroad?
A. Yes, sir; as much as any passenger.
Q. Tell the court if you have ridden upon what is called the south-bound fast mail train of that company recently. And, if so, from what point and to what point?
A. I was on it today a week ago. I rode from Duquoin to Cairo.
Q. What kind of car did you ride in?
A. I came from St. Louis in the St. Louis coach, taking the car from the Cairo short line—a through car.
Q. This St. Louis car was taken by the south-bound fast mail train, was it?
86 A. Yes, sir.
Q. Do you remember about how many passengers there were in that car?
A. No, sir; I do not.
Q. Give your best judgment.
A. Fifteen, or in that neighborhood.
Q. That car was brought by that train or by that engine to the Bridge Junction, was it?
A. Yes, sir.
Q. Are you able to tell the court whether or not that train took on passengers at any point south of Duquoin, as it came this way?
A. It did, sir.
Q. State whether or not it put off passengers at different points south of Duquoin.
A. It did, sir.
Q. Did it stop at Anna?
A. Yes, sir.
Q. Do you know whether it stopped at Cobden, *just* north of Anna?
A. It did not at that time.
Q. What cars did this train have at that time, besides the St. Louis car, after it left Duquoin?

A. I don't know, sir, for I did not ride in any other car after I left Duquoin.

Q. Do you know whether or not there was any other straight coach on that train besides the one that you were in?

A. There was a straight coach ahead of it, sir.

Q. On today a week ago did you say it was?

A. Today a week ago.

Q. Then from Duquoin to Bridge Junction was there two
87 straight coaches on the train?

A. Yes, sir.

Q. Same train?

A. Yes, sir.

Q. State whether t-ere were passengers in both of them or not.

A. Yes, sir; there were.

Q. How was the St. Louis brought from the Bridge Junction into Cairo and on down to the station?

A. Attached to that was an engine.

Q. What engine was it, do you know?

A. I do not know.

Q. You don't know whether it was the same engine that brought the train from the north?

A. I cannot say definitely, sir.

Q. What became of the other coach that was brought with the coach you were in down to the Bridge Junction from Duquoin?

A. It continued on south, sir.

Q. Do you know how many cars were in that train as it continued on southward over the bridge?

A. No, sir; not on that particular day.

Q. Are you able to speak with any degree of positiveness as to this train going on over the bridge southward with a straight coach or a car?

A. It is my impression that it did. The car forward or ahead of the St. Louis car certainly went over the bridge.

Q. Is that the last time you have ever ridden over it recently?

A. Yess, sir.

Q. What other time prior to that had you ridden upon the Central?

88 A. I go both directions about once in two weeks. I make a trip about every twenty days.

Q. I speak now with reference to this particular south-bound mail train. When did you ride upon that train at any date prior to the one you have spoken of?

A. I don't know the exact date, sir, but within two weeks of that time; that would make it about three weeks ago.

Q. Where did you go upon that train? Where did you take passage upon it?

A. At Tolono.

Q. How far did you ride?

A. To Cairo.

Q. In what kind of car?

A. The last time I rode from Tolono to Cairo I got in a car with

a partition in it, divided, as I suppose, one part for a smoker and the other part for a ladies' compartment.

Q. You rode in that?

A. Yes, sir.

Q. From Tolono to Cairo?

A. Yes, sir.

Q. Did you come from Tolono to Cairo in that car?

A. No, sir; I did not come to Cairo in that car; that car did not come to Cairo.

Q. Did that car come to Bridge Junction?

A. Yes, sir.

Q. I will ask you the number of cars that train had, if you remember, when you first entered at Tolono.

A. The last time the train had three cars—a mail car, a
89 baggage car, and a day coach.

Q. A mail car, a baggage car, and a day coach?

A. Yes, sir.

Q. What do you call that car?

A. I call it a day coach, sir.

By the COURT:

Q. Is that the compartment car?

A. Yes, sir; I never heard that term used; I never heard it before. I have heard it applied to day coaches and I have heard it applied to sleepers and chair cars, but I never did hear it applied to a day coach.

Q. When you became a passenger on the train at Tolono, what other passengers, what number, were in the car riding as passengers?

A. I should judge not to exceed five.

Q. What time in the day was it when you took passage there?

A. It was about 7.10 in the morning.

Q. Tell the court whether or not as that train proceeded southward it took on any passengers at any points and put off any.

A. Yes, sir; it did.

Q. What was the greatest number of passengers that that train had at any one time, according to your best recollection, if you can say?

A. That is a very hard question to answer; I paid but very little attention to it. I think the greatest number were in the St. Louis car, which was put on at Duquoin.

Q. After your coach reached Duquoin from Tolono, about three weeks ago, did it take on a coach from St. Louis?

A. Yes, sir.

90 Q. How many were in that car then? Just give your best judgment as to the number of passengers.

A. I make that trip right often, sir, and they average from about five or six to fifteen.

Q. In the St. Louis coach?

A. Yes, sir.

Q. What is your recollection as to the train at that time from Du-

quoin southward having more than one straight coach in addition to this day coach which you have spoken of?

A. I have seen it when it had an additional coach to the coach and baggage car, what they term a combination coach and baggage car.

Q. You do not understand me. You stated when you made the trip a week ago you had two coaches from Duquoin southward—two straight coaches; now, what I want to know is if when you made the trip three weeks ago there was two straight coaches from Duquoin down?

A. Yes, sir.

Q. There was?

A. Yes, sir.

By the COURT:

Q. Do you mean straight coaches, or that this day coach was one of them?

A. Yes, sir.

Q. I don't mean that; I don't mean the dat coach. The day coach was one that was divided up into two parts?

A. Yes, sir.

Q. What I mean by a straight coach is a car seated from end to end. Tell the court whether or not from Duquoin southward this train has not at times had two coaches in addition to the coach which you call the day coach?

91 A. No, sir; I never saw but two coaches on the train at a time. I ha-e seen two coaches and a combination car, but never to exceed two coaches. It is defined in the list of equipments that a combination car is not a day coach; it is a distinct car.

Q. I will ask you if at any time you have gone southward on this road on this particular train and there has been two passenger coaches with seats from end to end.

A. Yes, sir; there has.

Q. At such a time was there a car that was divided up in two parts on the train?

A. No, sir.

Q. And what other time have you ridden upon this south-bound fast mail besides these two that you have spoken of?

A. As I said before, I make the trip about every fifteen or twenty days.

Q. During what time have you made these trips?

A. Since the first of January, 1891.

Q. And once in every two weeks you have ridden upon that train?

A. I will average that.

Q. Tell the court whether or not during those time- you have ridden upon that train since January, 1891, the cars and passengers carried have been the same as those you have described.

A. Yes, sir.

Q. State what you know with reference to the train receiving

and discharging passengers at any and all stations at which it stopped.

A. It would discharge passengers and take on others when it would stop at places, and at other places passengers would not be taken on and passengers would not be discharged.

92 Cross-examination by WILLIAM H. GREEN:

Q. How many times have you made the trip over the Central in the last two or three months?

A. I don't know, sir; I made the trip, as I said before, about every fifteen days.

Q. The last trip you made was about a week ago?

A. Yes, sir.

Q. And you came from St. Louis?

A. Yes, sir.

Q. When you got on at St. Louis do you remember what the train was composed of?

A. Yes, sir.

Q. Well, please state.

A. It was composed of a baggage car and two coaches, sir.

Q. When you got to Duquoin which coach was you in?

A. In the Cairo and St. Louis coach. The coach ran through from St. Louis.

Q. What was done with the coach at Duquoin?

A. It was taken out of the Cairo Short Line train and attached to the Illinois Central train, the one called the fast mail.

Q. Was any other coach attached to that at that time except that?

A. Yes, sir.

Q. What other coach was that?

A. A passenger coach, sir.

Q. Perhaps you do not understand my question, and I will ask it so you can understand it. When I speak of the compartment car, please understand me that I mean the compartment car and not the coach. Now, in that view, I will ask you again how many cars of the St. Louis train was attached to the fast mail.

93 A. One, sir.

Q. Now, what was it?

A. A passenger coach—a straight coach.

Q. Was any compartment car there?

A. No, sir.

Q. The train then consisted of a baggage car and a mail car and two coaches, to the best of your recollection?

A. Yes, sir.

Q. And when you got to Bridge Junction the coach that you was in was hauled into Cairo?

A. Yes, sir.

Q. Was it hauled with the engine that came from Duquoin?

A. I was under that impression.

Q. Do you know what became of the balance of the train?

A. It went on south over the river.

Q. Did you see it?
A. Yes, sir.
Q. What engine hauled that?
A. I don't know, sir.
Q. Was it a fresh engine?
A. It was an engine that was at Bridge Junction when we arrived there.
Q. It was not the engine that hauled the train from Duquoin?
A. I don't think it was. My impression is that it was not.
Q. All the trips that you have made in the last two or three months have been in the coach always attached to the fast mail train?
A. The coach or the combination car.
Q. One or the other?
94 A. Yes, sir.
Q. How many times do you remember that it was a coach that was attached to the fast mail?
A. A straight coach?
Q. Yes, sir.
A. I know that not to exceed three times. I would not say that it was more than that.

G. B. RAMSEY, called as a witness on behalf of the plaintiff-, was sworn and testified as follows:

Direct examination by JOHN M. LANSDEN:

—. State your name.
A. G. B. Ramsey.
Q. Where do you live?
A. I live at Jackson, Tenn.
Q. How long have you lived there?
A. About three and a half or four years.
Q. What is your business?
A. I am traveling agent for the Mobile & Ohio railroad.
Q. For what portion of the business?
A. Both freight and passenger.
Q. How long have you been engaged in the railroad business or connected with any particular company?
A. Sin-e Nov., 1874.
Q. Are you acquainted with the Illinois Central railroad?
A. Yes, sir. I was with them about seventeen years.
Q. Are you acquainted with or do you know what is called
95 the south-bound fast mail train of the Illinois Central Railroad Company, what was formerly called No. 41?
A. Yes, sir.
Q. Did you ever ride upon that train north of the Ohio river?
A. Yes, sir; from Duquoin to Cairo.
Q. How many times?
A. Probably three or four times.
Q. When have you ever ridden over it?
A. During the last ten months—during what time I have been with the Mobile & Ohio.

Q. Three or four times during the last ten months?

A. Yes, sir.

Q. Where had you been at that time you took passage at Duquoin?

A. St. Louis.

Q. In what kind of a car did you ride in from Duquoin to Bridge Junction?

A. In the Cairo Short Line coach.

Q. If at any of these times you were transferred out there at Mounds into another car, state when it was.

A. I cannot state when it was, but I went through on that train to Jackson, Tenn., the first time period. I cannot give the date.

Q. I want to know whether you ever came through from St. Louis in a coach to Mounds and there left it and took a car that brought you to Cairo?

A. No, sir; that car came into Cairo.

Q. Tell the court about how many passengers were usually in the Short Line coach from St. Louis that was taken up by the fast mail and brought southward.

96 A. I can hardly tell you. I suppose there was eight or ten in it from Duquoin.

Q. When you came southward from Duquoin, state to the court whether or not the train stopped at different points and took on and put off passengers.

A. It did at all the junctions and at Anna.

Q. Is there a junction or crossing at Anna?

A. No, sir.

Q. Do you know whether the Central advertised that it will carry passengers by the south-bound fast mail for points north of Duquoin?

A. No, sir.

Q. What other kind of cars did the fast mail have when the St. Louis or Short Line coach was attached to it at Duquoin?

A. The mail car, baggage car, and compartment coach.

Q. A mail car, *gabb*age car, and compartment coach?

A. Yes, sir.

Q. Then, after it had taken on the car of the Short line at Duquoin, it would have four cars going southward, would it?

A. Yes, sir; and through to Mounds or to Bridge Junction.

Q. You say you made three or four trips in the last eight or ten months. Was that the condition of things during that time?

A. Yes, sir; the time that I made the trips it was.

Q. Every time you made the trip?

A. Yes, sir.

Q. It had three cars besides the one taken on at Duquoin?

A. Yes, sir; it had.

Q. State whether or not there were passengers in the compartment coach or not.

A. Yes, sir; there was.

97 Q. There were passengers in the compartment car in addition to those in the Short Line car?

A. Yes, sir; there were.

Q. When was the last time you came over that road on that train?

A. Probably three months.

Q. Three months ago?

A. Yes, sir.

Q. How did you get down from the Mounds to Cairo the first time you rode on the fast mail?

A. By a short line that ran from Cairo to Mounds Junction.

Q. How was the St. Louis coach drawn into Cairo?

A. I will not be positive, but I think the engine backed in, but I will not be positive of that.

Q. How did you get from Mounds Junction into Cairo?

A. I came into Cairo in a coach and baggage car that came from Cairo.

Q. What train drew it?

A. I think it was drawn by a switch engine, and the regular passenger engine went on ahead of us.

Q. Have you ever returned from Duquoin by the fast mail over the bridge and southward?

A. Yes, sir.

Q. How many times?

A. A couple of times.

Q. What year?

A. In the last ten months.

Q. Do you know what kind of a car you rode in over the bridge and southward?

A. A compartment car.

98 Q. Do you remember whether you entered that car at Duquoin and rode all the way here over the bridge in it, or did you ride — the passenger coach and then take the compartment car?

A. I rode from St. Louis to Mounds and then got in the compartment car at Mounds Junction.

Q. When you have ridden from Duquoin to Mounds Junction and then over the bridge south you may state whether there were any other passengers besides yourself in that car.

A. Yes, sir.

Q. About how many?

A. I cannot tell you; probably six or seven. There may have been five or six and there might have been ten; I don't remember now.

Q. State to the court whether or not you have gone southward on that train, starting here at Cairo.

A. Yes, sir; I have.

Q. How did you get on that train?

A. The last trip I made I went from the passenger depot to the Bridge Junction in the coach and baggage car.

Q. You went from the passenger depot here in a coach to the Bridge Junction?

A. Yes, sir.

Q. From there you got into another car?
A. Yes, sir.
Q. What kind of a car did you enter?
A. A first-class coach.
Q. When was it that you made that trip?
A. Three or four weeks ago, probably.
99 Q. This year?
A. Yes, sir; probably along the first of the year. Three or four weeks; I don't remember.
Q. How far did you ride southward after that?
A. To Jackson, Tenn.
Q. How many passengers were in the coach when you went to the Bridge Junction?
A. I cannot tell you exactly.
Q. Give some idea.
A. Half a dozen, or maybe more.
Q. How many other cars did they have besides the regular first-class coach that you remember of?
A. A mail car, a combination car, and this coach.
Q. Was that after you entered the train at the Bridge Junction that you had a first-class coach?
A. The first-class coach was on the same train.
Q. Did the first-class coach cross the bridge?
A. Yes, sir.
Q. And you rode in that coach to Jackson, Tenn.?
A. Yes, sir.
Q. Do you know whether that coach went on south from Jackson?
A. I am not positive, but I think it did.
Q. It passed over the bridge and went on down with three cars attached to the engine?
A. Yes, sir.
Q. A mail car, a baggage car, and a first-class coach?
A. Yes, sir; a mail car, a combination baggage car and smoker, and a first-class coach.
100 Q. Have you ever gone from the station here in Cairo southward on that train more than once?
A. Yes, sir; I have gone down on that train a great many times.
Q. In going southward from Cairo over the bridge on that train the time you were speaking of, did you transfer at Mounds?
A. Yes, sir; they always transferred at Mounds except the last trip I was on, and they transferred at Bridge Junction. The last trip I made they transferred at Bridge Junction, but prior to that time it has always been at Mounds.
Q. Do you remember what kind of cars this train had at the time of your previous trip, where you went to the Mounds to take it?
A. Well, there would be a compartment coach, and then there would be a regular first-class coach. The last time I went there was a regular first-class coach.
Q. Do you ever go to points south of Jackson on this fast mail?
A. I have, from Grenada, Miss., south.
Q. How far south from Grenada?

A. To New Orleans.

Q. How long ago had that been since you went?

A. About two months. I went about the middle of December.

Q. You may describe the train, as you recollect it, from Grenada to New Orleans.

A. I cannot do it very well, as I was in the sleeper and did not get out of it. I took the sleeper at Memphis.

Q. There was a sleeper on it?

A. Yes, sir; there was two sleepers—one from Chicago and one from Kansas City.

Q. Where did you take the Chicago sleeper?

101 A. At Water Valley.

Q. And you took one at Memphis?

A. Yes, sir; that was the sleeper from Kansas City.

Q. Do you know now of the cars you had, besides the two sleepers, on to New Orleans?

A. I think we had the mail car, baggage car, and two coaches and two sleepers; that is my impression.

Q. That was about the middle of December?

A. I think about the 15th or 18th of December; somewhere along there.

Q. Now, did you ever make any other trips on the fast mail south of Cairo or south of Jackson?

A. I don't know; I might have. I usually rode on all the trains when I was connected with the road.

Cross-examination by WILLIAM H. GREEN:

Q. Are you familiar with the fact that at Water Valley the fast mail train and what was formerly called No. 3 became merged, and the sleeper you speak of are sleepers of No. 3?

A. Yes, sir.

Q. That is true, is it?

A. Yes, sir.

Q. Part of the train that you got into was one with the sleeper, was it?

A. Yes, sir.

Q. Do you remember which?

A. The sleeper from Kansas City to New Orleans.

Q. That was at night, and eleven or twelve o'clock?

102 A. It was ten or 10.30.

Q. Did you make an examination of the train?

A. Not personal; no, sir.

Q. Did you know of your own personal knowledge what part of the fast mail train that reached Water Valley went on?

A. No, sir; but I think it was just as stated before—a mail car, a baggage car, two coaches, and two sleepers.

Q. What portion of the fast mail train that came to Water Valley was taken to New Orleans?

A. I did not know that they changed it. No. 41, as I understood it, became absorbed in No. 3's train, in a measure.

Q. The two trains became merged?
A. Yes, sir.
Q. And a new locomotive took the train onto New Orleans?
A. To Canton.

By the COURT:

Q. What do you call it from Water Valley south—No. 41 or No. 3?
A. No. 41.
Q. You speak of going to Bridge Junction in a first-class coach. When you got there what sort of a car did you get into to go south?
A. The last trip I made I went in a first-class coach.
Q. Now, do you know or do you not know that a first-class coach on that train south of Bridge Junction is an unusual thing?
A. As I stated before, I have gone south in a compartment car and a first-class coach.
Q. Both ways?
A. Yes, sir.
Q. There was nothing regular about it except the mail car and baggage?
103 A. Yes, sir.

J. W. WENGER, called as a witness on behalf of the plaintiff-, was sworn and testified as follows:

Direct examination by JOHN M. LANSDEN:

Q. State your name to the court.
A. J. W. Wenger.
Q. Where do — reside?
A. I reside at Cairo.
Q. How long have you resided there?
A. A little over twelve years.
Q. During that time what business have you been engaged in?
A. I have been in the employ of the Illinois Central Railroad Company diring that time.
Q. In what capacity have you been in the service of that company?
A. Commercial agent. I have charge of the freight department.
Q. How long have you occupied that position?
A. About five years.
Q. In the discharge of your duties are you required to travel southward or northward—one way more than the other?
A. My territory is south of here, in Missouri or Arkansas, -nd I travel mostly in that territory.
Q. Are you acquainted with what is known as the south-bound fast mail train of the Illinois Central?
A. Yes, sir; I know something about it.
Q. Do you know what time it was first put upon the road?
A. Well, I don't know that I remember the date. It was put on the road since 1890, or somewhere along there.

Q. Were the two fast mail trains, No. 41 and No. 42, put
104 on about the same time?

A. Yes, sir; I think so.

Q. Have they been running continuously and daily since that time when they — first put upon the road?

A. Yes, sir; it is my understanding that they have been.

Q. Have you ever ridden upon the south-bound fast mail train?

A. I have made two or three trips from St. Louis to Cairo, coming around from Arkansas home that way.

Q. Did you ever rid- upon the train at any place or any distance north of Duquoin?

A. I think something less than a year ago I got on the train at Chicago in the morning, at 3.50, and went to Gilman.

Q. When was that?

A. That was early in the fall.

Q. Last fall?

A. Yes, sir.

Q. Can you give the month?

A. In September or October, 1891.

Q. You rode on the fast mail train from Chicago to Gilman?

A. Yes, sir.

Q. When did you leave Chicago?

A. 3.15 in the morning.

Q. How far from Chicago to Gilman?

A. Eighty-one miles.

Q. At that time what cars were in the train and hauled or drawn by this train or in this train from Chicago to Gilman?

A. There was a mail car and a baggage car and a compartment car.

Q. Three cars, was there?

105 A. Yes, sir.

Q. Mail car, baggage car, and what you call a compartment car?

A. Yes, sir.

Q. What kind of a baggage car was this?

A. I cannot say; I did not notice, but I think it is what is called a short baggage car.

Q. Is that divided up into two parts?

A. No, sir.

Q. Describe the compartment car to the court.

A. It is an ordinary coach, with a partition in the center of the coach and a door in it.

Q. Is that the only time you have ever ridden on that train out of Chicago?

A. Yes, sir.

Q. Was there any other passengers besides yourself in that car?

A. One or two laying there asleep. One of them was an employee.

Q. Do you know whether they took on any other passengers before you reached Gilman or not?

A. I cannot say we did.

Q. Did you sleep going from Chicago to Gilman?
A. Yes, sir; I napped some.
Q. And you think that was the last fall of 1891?
A. Yes, sir; 1891.
Q. How often have you ridden on that train from Duquoin to Cairo?
A. I should think not more than three or four times.
Q. You rode in the Short Line coach, did you?
A. Yes, sir.
Q. Do you remember how many cars this train had in it
106 from Duquoin south after it took on the St. Louis coach?
A. Three cars.
Q. What were they?
A. Why, there was a long mail car and a baggage car or a combination—I cannot say which—and a compartment car.
Q. Which, with the St. Louis car, made four cars?
A. Yes, sir; four cars.
Q. What is a combination car?
A. A combination car is a baggage car and a smoker combined. One end is a baggage car and the other is a smoking car.
Q. Is it what you call a compartment car?
A. No, sir.
Q. When did you last come from Duquoin?
A. Well, the last trip I made must to have been ten or twelve days ago, about the last of the month—the 29th or 30th—somewhere along there.
Q. What kind of cars did the train have from Duquoin southward?
A. It had a mail car, and I don't know whether it was a combination car or a straight baggage car; I didn't notice particular.
Q. Do you remember of riding on that train, a short time after it was out on the road, from Duquoin to Mounds?
A. No; I do not.
Q. Do you remember of riding over the road at any time when you had to get out of the car at Mounds and take another car for Cairo?
A. No, sir; I never rode over it at that time. When I came from St. Louis I got in the St. Louis coach and came through with it. I never had to change coming down.
Q. Wh-t do you know, if anything, about the train bringing from Duquoin to Bridge Junction or to Mounds two first-class coaches?
107 A. Well, I cannot say that they brought two or that they did not. As a rule, they did not. One of them was a compartment car and one a first-class coach from St. Louis.
Q. Do you know that the train frewuently brings two straight coaches or first-class coaches from Duquoin to the Mounds or Bridge Junction?
A. No, sir; I do not ride on it frequently and therefore I don't know; but it has been my understanding th-t it was a compartment car.

Q. What knowledge have you ever had as to this train taking on a passenger coach at Champaign?

A. I have no personal knowledge of that. I understand that was where they started it from, but I don't know personally.

Q. Have you ridden on this train south of Cairo?

A. No, sir; I never have. I have never gone south of Cairo on No. 41.

Q. In coming from St. Louis on this train, how did you get from Mounds or Bridge Junction down to the station?

A. The transfer was running from here, and at Bridge Junction they coupled onto the coach I was in and brought us in here.

Q. What do you mean by transfer?

A. There was at that time, as I understand it, an engine backed onto the coach that left here at a certain time, and connected with the fast mail going south, and carried the mail from here.

Q. Do you know how that fast train hauled the St. Louis car in the city, into Cairo?

A. I don't know that I can say. I didn't notice particularly. I did not notice whether the engine was ahead or whether it was backing. I cannot say. I don't know whether it was back-
108 ing or running forward.

Q. Don't you know that until this recent change was made to Bridge Junction the engine went down from here with two cars in the usual way and attached to the St. Louis car and then backed into the city?

A. Well, it was either one way or the other. It either backed out or backed in; I don't remember now.

Q. What engine was it that took up the two cars and brought down the St. Louis car?

A. I would call it a switch-engine. It was an engine with pilots, used for that purpose.

Q. What business was that engine engaged in?

A. It was used for making up passenger trains in the passenger yards, I believe.

Q. It was used in the Cairo yards here, was it?

A. Yes, sir; in the passenger yards. I would not judge that it was a suitable engine for switching in the freight yards, as it had not a running-board on it.

Q. It is used as a passenger switch-engine here?

A. Yes, sir; for making up passenger trains.

Cross-examination by WILLIAM H. GREEN:

Q. The engine that you have been examined about is perfectly competent to haul the trains out there and haul them back?

A. Yes, sir.

Q. No question about that?

A. No, sir.

Q. When was it that you made the last trip on the fast mail?

A. From St. Louis?

109 Q. From anywhere.

A. The last trip I made from St. Louis was about the 29th or 30th of January.

Q. I will ask you to state again how you got from Cairo to Bridge Junction.

A. In a regular St. Louis coach.

Q. How was it brought in?

A. By an engine and balance of the train. I did not get out to see about it, but I just sat there and I got in all right.

Q. Do you know if it was the same engine that brought the train down to Bridge Junction?

A. Yes, sir; that was the same train.

Q. State to the court if it is not true that the cars were cut off of the fast mail and the engine was cut off from it and then attached to the other cars that was coming into Cairo and were hauled into Cairo.

A. Yes, sir.

Q. You had come from St. Louis?

A. Yes, sir.

Q. And that part of the St. Louis train that you were in came to Cairo; it was hauled to Bridge Junction in connection with the fast mail?

A. Yes, sir; and it was there cut off and -he fast mail went over the bridge.

Q. At Bridge Junction how did that portion of the St. Louis train that was intended for Cairo get into Cairo?

A. It was cut off. The engine was detached from the front of this train and a new engine placed on the fast mail which
110 went over the bridge, and then the engine brought us into Cairo.

Q. How long prior to the 29th had you made a trip on the fast mail?

A. I don't remember. I had not been over it for two or three months—three or four months. I seldom ever rode over it.

Q. Did you ever go south on the fast mail?

A. I never did.

Q. Did you ever notice what cars went south?

A. No; I did not notice them closely; I suppose, though, its regular cars—a mail car, a combination car, and a compartment car; that was the general run.

Redirect examination by JOHN M. LANSDEN:

Q. Do you know when this change was made to Bridge Junction instead of Mounds—the change in making the transfer?

A. No; but I judge it has been three or four months ago, or something like that; perhaps longer.

G. W. HATTER, called as a witness on behalf of the plaintiff-, was sworn and testified as follows, to wit:

Direct examination by JOHN M. LANSDEN:

Q. State your name.
A. G. W. Hatter.
Q. You reside in Cairo now, do you, Mr. Hatter?
A. Yes, sir.
Q. How long have you resided here?
A. About eleven years, with the exception of eight months.
Q. How long have you been co-nected with the Illinois Central Railroad Company?
111 A. About eighteen years.
Q. What position do you now occupy in connection with the road?
A. I am assistant superintendent of the Chicago division.
Q. How long have you been ass-stant superintendent of the Chicago division?
A. Since December 1st, 1890.
Q. What position did you occupy prior to that?
A. I was acting superintendent of the Springfield division.
Q. Have you been in the railroading business longer than your employ with the Central?
A. Not since I came to Illinois.
Q. You h-ve been in their employ about eighteen years?
A. Yes, sir; within a few months of it.
Q. Do you know, Mr. Hatter, when the Illinois Central Railroad Company put on the two fast mail trains upon the road?
A. My recollection is that it was in July, 1890.
Q. Have they been running continuously and daily ever since?
A. Yes, sir; I believe they have.
Q. Up to a few days since they were called No. 41 and 42?
A. Yes.
Q. Were those numbers given to them when they were first put upon the road?
A. When they were first put upon the road they were called Nos. 41 and 42.
Q. Since these fast mail trains were put upon the road in July, 1890, -as either of them ever run into the station in Cairo?
A. I can only speak since I returned from Springfield.
Q. You had no knowledge of it — that time?
112 A. No, sir.
Q. State whether or not when these trains were put upon the road the north-bound fast mail train came down to the station.
A. I cannot answer that, as I was not here at the time.
Q. When did you return to Cairo?
A. December 1st, 1890.
Q. When you came back to Cairo in December, 1890, was the north-bound passenger train then running down to Cairo and into the station?
A. No, sir.

Q. It was not?
A. No, sir.
Q. It crossed the bridge coming northward and stopped at Mounds?
A. Yes, sir.
Q. You say you came back about the 1st of January, 1890?
A. Yes, sir.
Q. How long after that till the north-bound train began to be brought down to the station?
A. I don't know exactly, but I would say between a month and a half or two months—perhaps two months, or in that neighborhood.
Q. That would be early in 1891?
A. Yes, sir.
Q. Have you at any time ever ridden upon the south-bound fast mail train?
A. Yes, sir.
Q. Have you ridden on it from Chicago southward?
A. Yes, sir.
Q. From what points to what points have you ridden upon that train?
113 A. I have ridden on that train from Champaign south to Centralia, from Champaign to Effingham, and from Champaign to Duquoin, and from Centralia to Duquoin, and from Duquoin to Cairo, and different ways.
Q. How often have you ridden on this train from Champaign southward?
A. Probabl- a matter of half a dozen times.
Q. What do you know as to this train having taken on at Champaign a regular passengers coach to be hauled southward?
A. A coach was taken on there for a time.
Q. How long after the train was put on in July, 1890, was it before this passenger coach began to be taken on at Champaign, which was taken by the train when first put on?
A. I cannot say, sir; I was not connected with the division at that time.
Q. Do you know whether or not when this train was first put on it began the taking of a passenger coach at Champaign or not?
A. I say that I cannot say, as I was not connected with the division at that time, and therefore I am not able to state positive.
Q. When you rode from Champaign southward, in what kind of a car did you ride generally?
A. I have ridden in a compartment car, and I have ridden in a coach that was without compartment or partition.
Q. Are you able to state whether this train ever at the times you have ridden on it from Champaign south had a regular first-class coach or not?
A. No, sir; it has not at any time had one.
Q. If it was ever accustomed to taking on a passenger coach at Champaign, when was that discontinued, if it was discontinued?

114 A. It was discontinued about two and a half or three months ago, as near as I can remember now.

Q. When was the first time that you ever rode on that train from Champaign southward?

A. About a year ago.

—. Did it take on a passenger coach at that time at Champaign?

A. I don't remember whether it took on a coach at Champaign or not.

Q. Well, if the taking on of this passenger coach at Champaign was discontinued about two and a half or three months ago, state about how long or during what time it was customary for the train to take on this coach there.

A. Well, they picked up the coach there perhaps for a matter of six or eight months, as near as I can recollect now.

Q. How far southward was that coach brought?

A. To Jackson, Tenn.

Q. What kind of a coach was it?

A. It was an ordinary coach.

Q. That was a coach that had upholstered seats all through the whole length of the car?

A. Yes, sir.

Q. And your recollection is that this coach was carried on this train from Champaign to Jackson, Tenn., during a period of six or eight months up to two and a half or three months ago?

A. For a time they went further than Jackson.

Q. Well, that is not the question. The question was that six or eight months prior to two and a half or three months ago this train took a regular passenger coach from Champaign on southward to Jackson or points further south.

115 A. They picked up the coach there; yes, sir.

—. And brought it south?

A. Yes, sir.

Q. At the times you have ridden from Champaign southward on that train were there or not other passengers riding on that train?

A. Yes, sir; there were other passengers.

Q. Tell the court whether or not you have ridden from Champaign southward on this train when it stopped at certain points and took on and put off passengers.

A. It stopped at all junction stations—that is, at all railroad crossings—for the delivery and receipt of mails, and also to deliver and receive passengers.

Q. Do you know through what county-seats the Illinois Central railroad runs from Chicago to Cairo?

A. I cannot state posative.

Q. Do you know whether Kankakee is a county-seat or not?

A. No, sir; I am not certain.

Q. Do you know whether Paxton is a county-seat or not?

A. I cannot state.

Q. Do you know whether Tuscola is a county-seat or not?

A. I think Tuscola is.

Q. Effingham is?

A. Yes, sir.

Q. Is it not true that there are no other county-seats on the line of road from Chicago to Cairo except Kankakee, Paxton, Tuscola, and Effingham?

A. I am not certain whether Paxton is a county-seat or not.

Q. What do you know, Mr. Hatter, concerning the train
116 taking on a regular straight passenger coach at Duquoin of the Cairo Short line?

A. Such was done.

Q. The coach ran from St. Louis to Cairo?

A. Yes, sir.

Q. Do you know whether or not this fast mail train has taken that coach ever since the fast mail train was put on?

A. No, sir; it has not.

Q. When you came back to Cairo early in December, 1890, do you know whether or not from that time up it was taken?

A. No, sir; it was not taking the coach at that time.

Q. When did this train begin taking on the coach at Duquoin?

A. If my recollection serves me right, it was in January, 1891; some time during the month of January, 1891.

Q. I will ask you, Mr. Hatter, because you certainly know about it, are you sure that this train did not take a Short Line coach at Duquoin prior to January, 1891?

A. Yes, sir; from the fact that we had another train running between Centralia and Cairo at that time.

Q. At the time you began picking up the St. Louis and Cairo coach at Duquoin, you had not discontinued the taking of the passenger coach at Champaign, which you said you discontinued about two and a half or three months ago?

A. No.

Q. You had not discontinued hauling the Champaign coach?

A. We were hauling the coach, but I am not sure whether it was a coach that we got at Chicago or whether we got it at Champaign.

117 Q. I am not speaking of the car that you got in Chicago. What knowledge have you as to how this fast mail train was made up at Chicago when it was first put on the road?

A. I understand that it consisted of a mail car and a baggage car.

Q. That is your understanding?

A. Yes, sir; that is my understanding.

Q. You have no personal knowledge of it?

A. No, sir.

Q. Nor have none at that time?

A. No, sir.

Q. Now, Mr. Hatter, I will ask you to state to the court if it is not a fact that the south-bound fast mail train has over a certain portion of this road—of the road north of Cairo—hauled for a greater or less distance two regular first-class coaches?

A. For a time such was done, but it is not done at the present and has not been done for two and a half or three months.

Q. Mr. Hatter, is it not a fact that within the last month or two

this south-bound fast mail train has brought to the Bridge Junction, besides its other cars, two regular first-class coaches, one of which is brought into Cairo and the other goes over the bridge southward, within the last two or three months?

A. I can state that the train consisted of a mail car, a compartment car—that is, a regular car—that is assigned to that line of trains.

By Mr. GREEN:

Q. What do you refer to?

A. No. 41; the fast mail.

Q. Do you not know that it is the daily custom of the south-bound fast mail to bring to Bridge Junction two regular first-class coaches, one of which is brought in here and the other goes southward?

118 A. It is the regular custom to bring the St. Louis and Cairo car to the junction, and the car that it has from Chicago is supposed to be a compartment car.

Q. Will you state that you have no knowledge of the train hauling southward over the bridge a regular first-class coach?

A. Within a month's time; yes, sir.

Q. Within the last two or three months?

A. I have knowledge of such being done because of an accident or otherwise, preventing the equipment from reaching its destination, in order to make up the proper train.

Q. Have you ridden on this train south of Cairo, Mr. Hatter?

A. No, sir.

Q. How did you bring passengers to Cairo from Mounds prior to the bringing down of the passenger coach from St. Louis? How did you bring them into Cairo?

A. Until the time we began hauling the St. Louis coach, passengers were transferred into the car that went out from here.

Q. You sent up a short train, did you?

A. Yes, sir.

Q. A train of two cars went from the station here to Mounds. That was the original agreement?

A. Yes, sir.

Q. You brought them in and the passengers you took out were transferred to the south-bound train?

A. Yes, sir.

Q. When you returned to Cairo in December, 1891, were the St. Louis passengers required to get out of the car at Mounds and take one of these cars and be brought to Cairo, or was the car then brought in?

119 A. The St. Louis passengers were not handled on that train then.

Q. The other passengers that came to the Mounds would not get out of the car, would they?

A. Yes, sir.

Q. They would get out of the car and take the short train to Cairo?

A. Yes, sir.

Q. Was the baggage transferred also?

A. Yes, sir.

Q. How long did that continue before they began bringing the St. Louis coach?

A. I can only speak for the time after I arrived here.

Q. It continued until after you began handling the St. Louis car?

A. Yes, sir.

Q. You think that was in January, 1891?

A. Yes, sir.

Q. When was this change made from the Mounds to the Bridge Junction for transfer purposes?

A. I am not right certain, but I think it was somewhere in October, 1891.

Q. From the time you came here, or from, say, in January, 1891, until this transfer was made down to Bridge Junction, I understand you sent up two cars and an engine to Mounds and attached on the St. Louis coach and hauled it into Cairo?

A. Yes, sir.

Q. How did the engine run when it was bringing the cars in?

A. That would depend upon the direction in which the engine was headed going out. If she was headed north in going
120 out, she would back up in returning.

Q. And *vice versa?*

A. Yes, sir.

Q. How would passengers from Cairo for points southward get on the fast mail?

A. Transfer them to the portion -f the train going south.

Q. They would get on the short train and they and their baggage would be transferred to the cars of the fast mail train and be taken southward?

A. Yes, sir.

Q. And the passengers of the fast mail train that were going to Cairo would be transferred to the short train?

A. That was true prior to the handling of the St. Louis coach.

Q. How long has this engine that has been bringing the cars to the Bridge Junction been bringing the cars into Cairo?

A. Probably close on to two months.

Q. What engine was that that was s-nt to Mounds and Bridge Junction for a while to bring the cars in?

A. The engine that does the switching in the yard—in the passenger yard.

Q. Has it recently been used on the ro-d as a passenger engine?

A. It has been run on the road, but not as a passenger engine.

Q. Is it used for any other purpose than for transferring cars here in the yard at Cairo?

A. No, sir; that is its duty. It works between here and at Mounds and Bridge Junction as the business requires. The engine is equipped with air and everything suitable for the work.

Q. Something has been said about the crew that brings this fast

mail from Centralia to Bridge Junction. How lang has this
121 crew been coming into Cairo?

A. Somewhere in the neighborhood of two months.

Cross-examination by WILLIAM H. GREEN:

Q. What is the number of the engine that you have been speaking if that formerly hauled the St. Louis car and passengers into Cairo?

A. No. 460.

Q. Is it true that that engine is fully equipped for road service the -ame as a passenger engine?

A. Yes, sir; if it would become necessary to use it, sir.

Q. Is it true that that engine takes out chat is known as a suburban train every day?

A. Yes, sir.

Q. And brings it in every day?

A. Yes, sir.

Q. Will you please state to the court what the equipment of the fast mail train was from the time it started to the present time, except during the six or eight months that it hauled the car from Champaign to Jackson, Tenn.?

A. Well——

Q. Please state to the court what the equipment o- the fast mail train was when you first knes of it up to the present time, except the six or eight months that it hauled the coach from Champaign to Jackson, Tenn.?

A. The equipment was a mail car, a baggage car, a full baggage car originally, and a coach, making three cars. Now the equipment out of Chicago is a mail car, a combination baggage and coach—a smoker, as we term them—and a compartment car.

Q. How long was the coach hauled from Champaign to Jackson, Tenn.?

122 A. As near as I can remember, I judge it was six or eight months; maybe a little less and maybe a little more.

By the COURT:

Q. The court desires to ask the witness a question or two which the attorneys on either side has failed to ask about and on which I want to get more information. Prior to the time you commenced handling the St. Louis car did you handle that same car, or did another train come from Centralia?

A. Another train—train No. 5—came from Centralia.

Q. Afterwards the fast mail taken the St. Louis car, and that train was discontinued?

A. Yes, sir; it was.

Q. Was No. 5, from Centralia to Cairo, a regular passenger train?

A. It was a local passenger train.

Adjourned till nine o'clock tomorrow morning.

NINE O'CLOCK A. M., *February 11th*, 1892.

Court met pursuant to adjournment, and trial is proceeded with.

A. F. TAYLOR, called as a witness on behalf of the plaintiff-, was sworn and testified as follows:

Direct examination by JOHN M. LANSDEN:

Q. What is your name?
A. A. F. Taylor.
Q. Where do you reside?
A. At Cairo, Illinois.
Q. How long have you resided in Cairo?
A. About twenty-five years.
Q. Were you ever in the employment of the Illinois Cen-
123 tral Railroad Company?
A. I was.
Q. For how long a time?
A. About seven years.
Q. Are you now in their employ?
A. No, sir.
Q. When did you leave their employ?
A. A week ago yesterday. That was about the middle of January.
Q. Were you continually in their employ for seven years or at different times?
A. No, sir; continually.
Q. Did you live at Cairo during that seven years of your employment?
A. Well, there was seven months that I did not.
Q. Where did you live then?
A. At Jackson, Tenn., and Duquoin; both places. One place was as good as the other.
Q. What was you doing—what was your em-loyment?
A. For a while I was clerk in the yards and the rest of the time I was firing.
Q. On a passenger engine?
A. Yes, sir.
Q. During the last year and a half, say, before you ceased to work for the company, where were you employed on the road as fireman?
A. Well, from about February, 1891, to the present date I was between Hera and Centralia.
Q. On what train was you employed as fireman from February up to the time you left the service of the company?
A. On all the passenger trains.
124 Q. Were you fireman on the south-bound fast mail train any part of that time?
A. Yes, sir.
Q. Well, how long were you fireman upon that train?
A. Well, I would catch it every three or four days at first, and then I was on steady for seven months. That was in 1890 and 1891.

I was on it every day then. I would go up one day and come back the next.

Q. Well, how long were you fireman upon that train?

A. Well, I would catch it every three or four days at first, and then I was on steady for seven months. That was in 1890 and 1891. I was on it every day then. I would go up one day and come back the next.

Q. During that seven months and subsequent to that time, from what points to what points were you fireman upon it?

A. Duquoin, Illinois, to Jackson, Tenn.

Q. Were you fireman on it from Centralia southward?

A. Not during that time, but I have been from Centralia to Cairo.

Q. During the time you were fireman upon that train, describe the cars which you hauled or which composed the train.

A. Well, when we ran from Duquoin to Jackson we would have a mail car, a baggage car, and coach, and we would pick up a St. Louis car. That would make four cars.

Q. A mail car and a baggage car?

A. And a combination car. Passengers generally call it a coach. I hardly ever looked inside, but there was four cars, though.

Q. That included the St. Louis Short Line coach?

A. Yes, sir.

Q. What kind of a car was the 3rd or last car on that train
125 before taking on the St. Louis coach?

A. Well, that I can hardly tell. I never went inside of that, hardly ever.

Q. Were you ever inside of it?

A. I have been inside of the train. It is generally a car with a partition in it, a smoking car and a coach.

Q. Was there seats in both compartments of the car for passengers?

A. Yes, sir.

Q. During the seven months you have spoken of and subsequently, were passengers carried in that car, in addition to those carried in the St. Louis coach?

A. Yes, sir.

Q. When at Duquoin did you notice the fast mail from Chicago there before it took on the St. Louis coach?

A. Yes, sir; I use to see it come in every day.

Q. Did it bring passengers to Duquoin?

A. Yes, sir; I guess it did. I saw them get out.

Q. Tell the court what you may know with reference to this train stopping at stations from Duquoin south.

A. Well, they use to stop at Carbondale and Mounds. That was their regular stops.

Q. What about stopping at Anna?

A. Sometimes they would stop at other stations.

Q. When would it stop at other stations?

A. Sometimes the conductor would pull the bell on us. Carbondale and Mounds was the only regular stopping places we had.

Q. Was not Anna one of the regular stopping places?

A. Not at that time.

126 Q. Did it become afterwards one of the regular stopping places?

A. I think it did.

Q. What do you know of that train stopping at any of the stations from Duquoin southward when it had passengers for those places from St. Louis?

A. Yes, sir; we use to stop at some places south of Duquoin when we had passengers.

Q. When you got there to Mounds with the fast mail, how were the passengers transferred there that came to Cairo?

A. They use to have a "jerk-water" run from Cairo out there. I suppose you would call it a suburban. The passengers were transferred into the hind coach.

Q. How was the transfer made before you began to bring in this St. Louis coach from Mounds to Cairo?

Objected to form; sustained; exception.

Q. When did you first act as fireman on that train?

A. We left Jackson on the 6th of July, and that put us into Cairo on the 7th of July, 1890.

Q. When did you first act as fireman on that train from Duquoin or Centralia southward?

A. The 7th of July, 1890. I would not be positive that that was the exact date, but it was about that time.

Q. How did that train transfer its passengers at Mounds in July and August, when you were acting as fireman upon the train?

A. It has been a good while ago, and I never took particular notice, but I noticed that they sent a train from here to meet ours.

Q. Do you know whether that train at that time brought the St. Louis coach or not?

127 A. It may not, but I always thought it did.

Q. When you were acting as fireman from Duquoin, how far did you go south?

A. To Jackson, Tenn.

Q. Was that engine run through from Duquoin to Jackson?

A. Yes, sir.

Q. What cars did you take over the bridge after leaving the Mounds on to Jackson?

A. Mail car, baggage car, and one coach. I don't think there were any more.

Q. Tell the court if this train carried passengers after you passed over the bridge on south.

A. Yes, sir; it carried passengers.

Q. Did that crew go through with the engine from Duquoin?

A. No, sir.

Q. Where was the change of crews made?

A. At Mounds.

Q. You went through, however?

A. Yes, sir.

Q. And the engine?
A. Yes, sir.
Q. How long, Mr. Taylor, did this method of running the train continue, to your knowledge?
A. Well, I think it was from July to the latter part of January or the first part of February, 1891. From July, 1890, to February, 1891. I don't remember the exact date, but somewhere around there.
Q. When did you again act as fireman on this train after
128 the seven months you have spoken of?
A. Well, it was some little time. I got another run. It was several months.
Q. How was the train run then?
A. It was run between Centralia and Cairo.
Q. Where did the fast mail train stop?
A. I don't know whether it was at Bridge Junction or Mounds then; I cannot say; either one or the other; I never paid no attention to it.
Q. When were you last fireman upon that train?
A. It was some time in November last?
Q. Where did you transfer then?
A. At Bridge Junction.
Q. What kind of cars were the train then hauling?
A. About the same as we hauled before.
Q. When the company began making the transfer at Bridge Junction how were the Cairo passengers brought down to the station in Cairo?
A. That St. Louis coach was brought up and the suburban would back up on it and take it into Cairo.
Q. How was the cars brought in? How was the engine — out?
A. Backed into Cairo.
Q. Where did that train first stop in Cairo after it got into town?
A. Down at the passenger depot.
Q. How many cars did the engine coming out of Cairo to meet the fast mail take out with it?
A. Two.
Q. How were they brought back—in front or in rear of the engine?
129 A. The engine backed up. The engine was first and then the cars.
Q. In going out?
A. In going out the engine went head on. The engine first and then the train.
Q. How would the engine couple on to the St. Louis car?
A. They run around the train up there and backed the train on the St. Louis car.
Q. And connected the three coaches together?
A. Yes, sir.
Q. And backed in?
A. Yes, sir.
Q. Were you ever fireman on the north-bound fast mail train?

A. Yes, sir.
Q. From what points to what points?
A. From Jackson, Tenn., to Duquoin, and from Cairo to Centralia.
Q. What are you doing now, Mr. Taylor?
A. I am working in the court as bailiff.
Q. Bailiff of the court?
A. Yes, sir.

Cross-examination by WILLIAM H. GREEN:

Q. Did I understand you to say that you have been discharged?
A. Yes, sir.
Q. It was not your business as a fireman, was it, to examine the cars?
A. I never examined no cars. A person can look.
Q. You spoke of the fast mail train having a coach. So far as you know, it was a compartment car?
A. Sometimes it was; yes, sir. When it first started I think
130 it was a combination car.
Q. It had a compartment car?
A. Yes, sir; it was my duty to look at the train now and then to see if it was all there.
Q. It is your duty to keep from getting off the track?
A. Yes; but we do get off once in a while.

G. W. HATTER recalled for cross-examination on behalf of the defendant:

Q. You were asked just at the close of your examination by the court in reference to the train No. 5 and No. 6. I will ask you to state to the court what took place with reference to the train at the time that No. 5 and 6 were taken off?
A. At that time, January 11th, there was a new time-card issued and a general revision of the passenger trains. Trains No. 3 and 4 were through trains; No. 5 and 6 were taken off, and we put on a local train between Centralia and Cairo, and No. 3 and 4, which made but few stops before, then was made a local train to do local work in the place of No. 5 and 6. Trains No. 45 and No. 46, which were limited vestibule trains, were put on and took the place of No. 3 and 4 and did through business.
Q. And three and four took the place of five and six?
A. Yes, sir.
Q. Was that change advantageous or disadvantageous?
A. It was advantageous to Cairo and the traveling public.
Q. I will ask you to state a little more distinctly, Mr. Hat-
131 ter, as to the difference in time—I mean the difference as to the time of day in coming to Cairo and going out of Cairo—between the local trains No. 5 and 6 and the trains No. 3 and 4, after the change you speak of?
A. Train No. 5 arrived here at Cairo at 2.15 p. m.; train No. 3

arrived at Cairo at 9.30 a. m.; train No. 6 departed from Cairo at 12.25 p. m., and train No. 4 departed from Cairo at, I believe, 4.10 p. m.

Redirect examination by JOHN M. LANSDEN:

Q. When this change was made did not the company advertise that the fast mail would take the St. Louis car at Duquoin?

A. Never advertised that I know of, sir.

Q. Did you know the time-card provided for the connection of the mail train at Duquoin with the St. Louis train for the purpose of taking up the St. Louis car?

A. Yes, sir.

Q. Before that change was made how was that car brought to Cairo?

A. By train No. 5.

Q. Was that a Chicago train?

A. No, sir.

Q. Where was it made up?

A. At Centralia.

Q. What was the local passenger train?

A. That was the local passenger train for this end of the road.

Q. What train was put in to take the place of No. 5?

A. Train No. 3 was substituted for No. 5. Train No. 3 was running before No. 5 was taken off, but it was a through train
132 from Chicago to New Orleans. That train was then delegated to do local work south of Centralia instead of train No. 5.

Q. It did not take the passenger car?

A. No; for it made no connection at Duquoin with the train from St. Louis.

Cross-examination by WILLIAM H. GREEN:

Q. You were asked about the fast mail train taking up the St. Louis coach at Duquoin which had been taken up by train No. 5. Now I will ask you to state to the court which train got to Cairo sooner, No. 5 or the fast mail.

A. The fast mail arrived before No. 5, or, that is, arrived at Mounds.

Q. What is the difference in time from Chicago to Duquoin, or from Duquoin to Cairo, I mean, between No. 5 and the fast mail?

A. No. 5 arrived here at 2.15 p. m., and the fast mail at 2 p. m.

Redirect examination by JOHN M. LANSDEN:

Q. I want to ask you, Mr. Hatter, a question about the cars that were brought from Chicago. I have been over the matter, but I did not get a clear understanding of the matter yesterday. The combination car, I will ask you, Mr. Hatter, is one that is divided up for different purposes, is it not?

A. Yes, sir.

Q. The compartment car of which you spoke yesterday is intended wholly for passengers?

A. Yes, sir.

Q. Both of these cars had partitions in the centre?

A. Yes, sir.

133 Q. Was the combination car in this fast mail train, the south-bound fast mail train, or any part of the combination car used as a smoking car?

A. Used as a smoking car?

Q. Yes, sir.

A. That car is termed a combination baggage and smoking car, but I presume that those that want to go in there and smoke can do so.

Q. That is, those in the compartment car would go in the combination car if they wanted to smoke?

A. Yes, sir.

Q. Why are these cars called compartment cars divided into two parts in that way? Why is that done?

A. I am not positive, but I understand it is to cover the laws in running through the States of Tennessee and Mississippi.

Q. Where they require the white and black to be separated?

A. Yes, sir.

Q. The compartment car is called a coach, is it not?

A. No; it is called a compartment car.

Q. But I will ask you if the company did not advertise, and has not from the time these two fast mail trains were put on the road, that it would carry a coach from Chicago to New Orleans?

A. Not having seen the advertisement, I can't state.

Q. But returning to the same question, is not the compartment car often called and treated as a coach?

A. The compartment car is used for the purpose of carrying passengers.

134 Cross-examination by WILLIAM H. GREEN:

Q. If there is any such advertisement as has been referred to as advertising that fast mail train would carry a coach from Chicago through to New Orleans you do not know anything of it?

A. No, sir; I do not.

JOHN H. JONES, recalled as a witness on behalf of the plaintiff, testified as follows:

Direct examination by JOHN M. LANSDON:

Q. What, if any, railroad guide do you use in your office?

A. We use the official guide.

Q. By whom is that published?

A. It is published by the National Railway Publishing Company of New York.

Q. Does the Illinois Central publish its time-table or card in that publication?
A. It does.
Q. How long have they published their card in that guide?
A. I suppose ever since the existence of the guide.
Q. Ten or fifteen years?
A. I think ten years.
Q. Look at that publication I hand you and state what it is.
A. That is the Travelers' Official Guide.
Q. For what month?
A. The month of January, 1891.
Q. That *id* the guide that is used in your office here?
A. Yes, sir.
Q. Please turn to page 564 of that guide which you have in your hand and state whether or not that and the subsequent pages
135 contained the advertisement of the Illinois Central Railroad Company.
A. They contain the time-card of the road.
Q. From what page to what page?
A. From page 556 to page 569, inclusive.
Q. Please look at page 569 and read it to the reporter.

Objected to. Objection sustained. Exception.

Paragraph at top of page 569, right-hand column, entitled "Through-car arrangement, Chicago and New Orleans line."

The plaintiff then offered in evidence paragraph of page twelve of folio already in evidence, entitled "Chicago and New Orleans line."

12.

Illinois Central R. R.

Through-car Arrangement.

Chicago & New Orleans line.

Limited train leaving Chicago 2.00 p. m. has through coaches and Pullman buffet sleepers to New Orleans.

Train leaving Chicago at 8.30 a. m. has through coach from Chicago to Cairo. Train leaving Chicago at 8.00 p. m. has through coaches and buffet sleepers to Water Valley, where sleeper is turned over to fast mail train No. 41 and carried through to New Orleans. Train leaving Chicago at 3.15 a. m. has through coach Chicago to New Orleans and Pullman sleeper Water Valley to New Orleans. Limited train leaving New Orleans at 12.01 p. m. has through coaches and buffet sleepers to Chicago; through sleeper New Orleans to Carbondale. Train No. 42, leaving New Orleans at 6.00 p. m., has through coach New Orleans to Chicago and through sleeper New Orleans to Water Valley, where it is taken by train No. 4 and carried through to Chicago.

Q. Look at that folio that you now hold in your hand and state who issued it and for what month it is issued.

A. It is issued for August, 1891.

Q. By whom was it issued?

A. By the general passenger agent.

Q. Of the Illinois Central Railroad Company?

A. Yes, sir.

Q. That is a similar folio to the one shown you before?

A. Yes, sir; I believe the one shown me before was for
136 December and this is for August, 1891.

Q. Please look at the folio issued August, 1891, and state to the court the length of time required for No. 41 to run from Chicago to New Orleans.

A. In the month of August train No. 41 left Chicago at three fifteen a. m.

The same part of the folio for August, 1891, as was offered in folio of December 20, 1891—first paragraph, on page 12. No objections.

12

Illinois Central R. R.

Through-car Arrangement.

Chicago & New Orleans line.

Limited train leaving Chicago 3.00 p. m. has through coaches and Pullman buffet sleepers to New Orleans.

Train leaving Chicago at 8.40 a. m. has through coach from Chicago to Cairo. Train leaving Chicago at 8.40 p. m. has through coaches and buffet sleeper to Water Valley, where sleeper is turned over to fast mail train No. 41 and carried through to New Orleans. Train leaving Chicago at 3.15 a. m. has through coach Chicago to New Orleans and Pullman sleeper Water Valley to New Orleans. Limited train leaving New Orleans at 12.01 p. m. has through coaches and buffet sleepers to Chicago. Train No. 42, leaving New Orleans at 6.00 p. m., has through coach New Orleans to Chicago, through sleeper New Orleans to Duquoin, and through sleeper New Orleans to Water Valley, where it is taken by train No. 4 and carried through to Chicago.

Also the time-table at top of page 11, on the two folios entitled "St. Louis, Cairo, Memphis & New Orleans lines." No objections.

December 20, 1891. December 20, 1891.

11

Illinois Central R. R.

St. Louis, Cairo, Memphis, and New Orleans lines.

St. Louis, Cairo, and New Orleans.

†Local.	*Limited	*Fast mail.	M.	Stations.	*Fast mail	*Limited.	*Local.
4.25 p. m.	7.40 p. m.	8.30 a. m.	0	Lv. St. Louis (Union depot).....Ar.	6.50 p. m	1.45 p. m.	7.20 a. m.
4 40 "	7 55 "	8.45 "	2	" E. St. Louis..... "	6.35 "	1.30 "	7.05 "
5 21 "	8.28 "	9 25 "	16	" Belleville..... "	5.59 "	12 52 p. m	6.30 "
7.05 p. m.	9 53 "	11.00 "	63	" Pinckneyville..... "	4.22 "	11.05 a. m.	4 40 "
	10.15 "	11.30 "	73	Ar. } Duquoin..... { Lv.	3.55 "	.....	4.15 "
	10.25 "	11.30 a. m.	73	Lv. } { Ar.	3.45 "	.....	3.35 "
8.40 p. m	11 00 "	12 04 p. m	93	" Carbondale.....Ar.	3.05 "	7.22 a. m	2.46 "
9.21 "	11.37 p. m	12.40 "	114	" Anna..... "	2.25 "	6.48 "	1.55 "
10.40 p. m.	12.50 a. m	2.00 p. m.	150	Ar. Cairo..... .Lv.	1.10 p m.	5.40 a. m	12.2 a. m.
	1.45 p. m	2 00 a. m.	517	" Jackson, Miss..... "	12.20 a. m.	5.30 p. m	
	7.30 p. m	8 25 a. m.	700	Ar. New Orleans .... ..Lv.	6.00 p. m.	12.01 p. m.	

Limited train New Orleans and Cairo to St. Louis and local train St Louis to Cairo make connection via Carbondale.
* Daily. † Except Sunday.

August, 1891.

Illinois Central Railroad.

St. Louis, Cairo, Memphis, and New Orleans lines.

St. Louis, Cairo, and New Orleans.

Local.	Limited.	Fast mail.	M.	Stations.	Fast mail.	Limited.	Local.
4.25 p m	8 30 p. m.	8.30 a m.	0	Lv. St. Louis (U. D)...Ar.	6.50 p. m.	1.45 p. m.	7.20 a. m.
4.40 "	8.45 "	8.45 "	2	" E. St Louis..... "	6.35 "	1.30 p. m.	7.05 "
5.21 "	9.18 "	9 25 "	16	" Belleville..... "	5.59 "	12.52 p. m.	6.30
7.05 "	10.45 "	11.00 "	63	" Pinckneyville..... "	4.22	11.05 a. m.	4.40 "
	11.05 "	11.25 "	73	Ar. ..... Lv.	3 55 "	.....	4.15 "
	11 25 "	11.45 "	73	Lv. .....Ar.	3 45 "	.....	4 00 "
8.40 "	11 57 "	12.14 p. m.	93	" Carbondale..... "	3.05 "	7.22 a. m	3.15 "
9 22 "	.....	12.52 "	114	" Anna..... "	2 25 "	6 48 "	2.33 "
10.40 "	1.35 "	1 20 p. m.	150	Ar. Cairo..... .....Lv.	1.10 "	5.40 "	1.05 "
	2.33 "	2.11 a. m.	517	" Jackson, Miss ..... "	12 10 a m.	5.30 p. m	
	8.01 "	8 25 "	900	" New Orleans..... "	6.00 p. m.	12 01 p. m	

Limited train New Orleans and Cairo to St. Louis and local train St. Louis to Cairo make connection via Carbondale.

137 Cross-examination by WILLIAM H. GREEN:

Q. I will ask you to state to the court if the Illinois Central Railroad Company publishes in that volume anything except time-tables.

A. As I have no control in the matter, I cannot say.

Q. You have no control?

A. No, sir.

Q. Then you don't know that the Illinois Central authorizes the publication of anything except its time-tables?

A. That is all. I have no control of the matter myself.

Q. Do you know of your own personal knowledge that it is published by order of the Illinois Central?

A. No, sir; I do not. I cannot say.

Redirect examination by JOHN M. LANSDEN:

Q. Who furnished those publications to you?
A. They are furnished by the general passenger department.
Q. Of the Illinois Central railroad?
A. Yes, sir.
Q. We offer that paragraph at top of page 569, right-hand column, of the guide in evidence, your honor.

The COURT: I think that is admissible.
Exception by the defendant.

Travelers' Official Guide of the Railway and Steam Navigation Lines of the United States and Canada.

Illinois Central railroad—continued (page) 569.

Through-car Arrangement.

Chicago and New Orleans line.—Train No. 3, leaving Chicago 8.30 p. m., has through coach and sleeper to New Orleans; train No. 4, leaving New Orleans 8.15 p. m., through coach and sleeper
138 to Chicago; train No. 41, leaving Chicago 3.15 a. m., has through coach to New Orleans; train No. 42, leaving New *New* Orleans 7.00 p. m., has through coach to Chicago.

Q. Look at the folio dated August, 1891, and state the length of time required by the fast mail, south bound—that is, No. 41—from Chicago to New Orleans.
A. The August folder has it as leaving Chicago at 3.15 a. m. and arriving at New Orleans at 8.25 a. m.; that would be twenty-nine hours and ten minutes, I guess.
Q. Now, look at No. 45, the vestibule, and state the length of time required for it to run from Chicago to New Orleans.
A. In August, 1891, train No. 45, being the vestibule, departed from Chicago at 3.15 and arrived in New Orleans at 8.45 p. m.; that would be twenty-nine hours——
Q. Are you right about 8.45?
A. Just 8.00 p. m., I should say.
Q. Making what length of time?
A. Twenty-nine hours on the schedule now.
Q. Then, according to the schedule issued in August, 1891, the vestibule train No. 45 ran from Chicago to New Orleans in ten minutes less than the south-bound fast mail?
A. It ran it in twenty-nine hours, according to the folder.
Q. Now, at that time did the vestibule run into the station here at Cairo and run out again?
A. The schedule shows that it came into the station.
Q. Is it not true that the vestibule, ever since it has been out on the road, came down to the station in Cairo and out off and took on passengers?
A. It always has, sir.

139 Q. When did it arrive here and leave here, by that table?
A. It arrives in Cairo at 1.35 a. m. and departs at 1.55 a. m.
Q. How many minutes does it stay here?
A. Twenty minutes.
Q. Do passengers take their meals here?
A. That is in the middl- of the night.
Q. State whether or not the fast mail train has run upon the same schedule of time from the time it was first put on the road to the present time substantially similar to the two folios you hav- had. It leaves Chicago about the same hour and arrives in New Orleans about the same hour, does it not?
A. I cannot say positive. That is my understanding of it, of course.

N. W. DAILY, called as a witness on behalf of the plaintiff-, was sworn and testified as follows:

Direct examination by JOHN M. LANSDEN:

Q. What is your name?
A. N. W. Daily.
Q. Where do you reside, Mr. Daily?
A. Cairo, Illinois.
Q. How long have you resided there?
A. Going on four years.
Q. In whose employment are you now?
A. In the employment of the Illinois Central Railroad Company.
Q. How long have you been in their employment?
A. About eight years.
140 Q. Where did you reside before you came to Cairo?
A. Different points on that line.
Q. North or south of Cairo?
A. North and south; principally north.
Q. What has been your duty while in the employ of the Central?
A. Repairs and constructions of the bridges.
Q. What are your duties now?
A. Those are my duties now.
Q. North or south of Cairo?
A. Both.
Q. Are you acquainted with the south-bound fast mail train upon the Central?
A. Slightly.
Q. Have you ever ridden upon it?
A. I have.
Q. From what points to what points?
A. From different points.
Q. Name some of them.
A. From Chicago south.
Q. How far southward from Chicago?

A. To Champaign.
Q. When did you ride from Chicago to Champaign?
A. About the 26th of July, 1890.
Q. Do you remember when the train left Chicago at that time?
A. About 3.15.
Q. In the morning?
A. Yes, sir.
Q. Was any one with you at that time?
141 A. No, sir.
Q. What kind of cars did the train have?
A. A *am*il car an*a* a baggage car.
Q. Only two?
A. Only two.
Q. What kind of a car was the baggage car?
A. An ordinary baggage car, small size.
Q. Any seats in it for passengers?
A. No, sir.
Q. None at that time?
A. No, sir.
Q. What car did you ride in?
A. In the baggage car.
Q. Did you go further south than Champaign on it?
A. No, sir; not at that time.
Q. Have you at any other time ever ridden on the south-bound fast mail train from Chicago southward?
A. Yes, sir.
Q. When?
A. I don't remember the exact time.
Q. How many times since the first time?
A. Only once that I remember of.
Q. How long was that after the first time?
A. Over a year, or about a year.
Q. Do you remember when you left Chicago then?
A. About the same time.
Q. What kind of cars did you have in that train when you left Chicago?
142 A. A mail c-r, baggage car, and a coach.
Q. What car did you ride in?
A. I rode in the coach.
Q. Who was with you at that time?
A. No one was with me.
Q. Was there any other passenger on board that coach when it left Chicago?
A. Yes, sir.
Q. How many?
A. I cannot tell exactly. A very few.
Q. Can you give an idea?
A. There were not more than five. Possibly there were not more *more* than three or four.
Q. How far southward did you ride at that tije?
A. My recollection is that I went to Centralia.

Q. Did that train on that trip take on and put off passengers?
A. It did in some cases.
Q. Do you remember how many passengers it had at Centralia?
A. I don't remember how many.
Q. Was there more in it than when it left Chicago?
A. Yes, sir; there were more.
Q. Have you ever ridden on that train between Chicago and Centralia at any other times except the time you have spoken of?
A. Not that I remember of.
Q. Have you ridden upon that train from Centralia southward?
A. Yes, sir.
Q. How many times?
A. I don't remember.
Q. Several times?
143 A. No; not so very often.
Q. From Centralia how far southward did you ride?
A. I rode to Cairo once that I know of.
Q. When was that?
A. About four months ago.
Q. When you left Centralia on that trip were there other passengers aboard that train?
A. Yes, sir.
Q. What kind of cars did you have when you left Centralia?
A. A mail car, a *ab*ggage car, and a compartment car.
Q. You would call that a coach, would you not?
A. I don't know that I would.
Q. After you left Centralia and going southward state whether or not the train stopped at points here and there to take on and put off passengers.
A. Yes, sir; it did.
Q. What do you know as to its taking on a St. Louis coach at Duquoin?
A. Yes, sir; it did.
Q. What car did you get into when you got on at Centralia this last trip?
A. The compartment car.
Q. After the St. Louis coach was taken on at Duquoin what car did you ride in?
A. In the St. Louis coach.
Q. Did you observe whether or not the train stopped at different places on the road from Centralia to Cairo and took on and out off passengers?
A. Yes, sir; it stopped and took and out off passengers at
144 some of the stations.

Counsel for defendant here waive the right to cross-examine the witnesses.

G. O. VINCENT, called as a witness on behalf of the plaintiss, was sworn and testified as follows:

Direct examination by JOHN M. LANSDEN:

Q. State your name to the court.
A. G. O. Vincent.
Q. Where do you live?
A. Cairo.
Q. How long have you lived in Cairo?
A. A little over six years.
Q. What is your business?
A. I am local passenger agent of the Illinois Central railroad.
Q. How long have you been passenger agent of the Illinois Central?
A. Something over six years.
Q. What are your duties as local passenger agent, generally?
A. I look after the passenger business for the road; see that the passengers get on and off the train as they come and go.
Q. Soliciting passengers, generally, for travel over your road?
A. Yes, sir.
Q. In discharging your duties do you go to the other passenger depot here in Cairo?
A. Yes, sir.
Q. And to different parts of the town?
145 A. Yes, sir.
Q. And the towns and cities in the neighborhood of Cairo?
A. Yes, sir; sometimes.
Q. For what particular trains do you solicit passengers?
A. No particular train.
Q. Tell the court whether you solicit passengers for all trains that come into the passenger depot.
A. I solicit for the railroad generally.
Q. You solicit business for the railroad?
A. Yes, sir; for the Illinois Central railroad.
Q. You solicit persons to become passengers on the Illinois Central railroad?
A. Yes, sir.
Q. Do you run for any particular train?
A. No, sir; not necessarily.
Q. What?
A. Not necessarily; no, *die*. Of course when I find a passenger that wanted to go anywhere I would tell him the train that would make the best time.
Q. You would tell him that?
A. Yes, sir.
Q. State to the court whether you solicit passengers for the vestibule train.
A. Not particularly; no, sir.
Q. When you find a passenger that wants to go south or north do you tell him the time of the arrival and departure of the train?
A. Yes, sir.

Q. When a person desiring to make a trip over your road applied — you or you apply to him, is — the custom to tell him
146 which of the trains that carries passengers that leaves first?
A. Yes, sir.

Q. Tell the court whether you solicited passengers for the south-bound fast mail train.

A. Not particular; no, sir.

Q. What do you mean by saying not particular?

A. For that particular train.

Q. Suppose a passenger or a person desired to go southward from Cairo at eleven o'clock in the day, what would you tell him?

A. I would tell him he could leave on that train.

Q. Would you take the person who desired to go to the ticket office and have him purchase a ticket there?

A. Oh, yes. That is my business—to get them to buy tickets.

Q. What is the train that goes south immediately after the fast mail; the first train that carries passengers?

A. No. 3, at 9.50 in the morning.

Q. When would the passengers have to leave here to go south on the fast mail?

A. 1.25 p. m.

Q. Then there is a difference in the time between 9.50 and 1.20?

A. Yes, sir.

Q. Then after the fast mail goes what is the next train going south?

A. 6.25.

Q. How far does that go?

A. To Fulton, Ky.

Q. Then if the passenger did not go out on the fast mail at 1.20 he would have to wait till 6.25 to go south?

147 A. To go to Fulton.

Q. Then from 9.50 in the forenoon till 6.25 in the afternoon travelers cannot go southward on your roads unless they take the fast mail train—south-bound fast mail train?

A. No, sir.

Q. Mr. Vincent, how do you get your passengers here in Cairo from the station to the south-bound fast mail train?

A. They take an engine and two cars up to Bridge Junction.

Q. Before they transferred at Bridge Junction where did they go with their two cars?

A. At Mounds Junction.

Q. How did they transfer the passengers at Bridge Junction?

A. We took them to the Mounds Junction in the cars and then bring them back.

Q. Would you transfer their baggage?

A. Yes, sir.

Q. Do you transfer the same way now as you did at Mounds Junction?

A. Yes, sir.

Q. How long has this transfer been made at the Bridge Junction?

A. I should think three or four months. I don't know exactly.

Q. Did you or not frequently go up there on that short train from the station here at Cairo to the Bridge Junction?

A. I do, sir.

Q. Have you been up there recently?

A. Yes, sir.

Q. What kind of cars does the fast mail train bring to Bridge Junction or has it been bringing recently?

A. It has — bringing a mail car and sometimes a straight
148 coach; sometime- they have a straight coach.

Q. That is, besides the St. Louis coach?

A. Yes, sir.

Q. How do you bring the passengers back from Bridge Junction?

A. We bring them in the St. Louis coach. The one coming from St. Louis is attached to the two we send uo there and they are brought back into the town.

Q. You take up two cars when you take the passengers up there?

A. Yes, sir.

Q. And bring three cars back?

A. Yes, sir.

Q. Do you know when the fast mail train began to bring the St. Louis coach down to Mounds?

A. No, sir; I cannot tell. It has been several months ago.

Q How was the transfer made before they began bringing the St. Louis coac*k* down?

A. Well, they use to bring a coach and baggage car the same as they do now, and my recollection is that they use to get passengers off of that train and get them in the coach and bring them back.

Cross-examination by WILLIAM H. GREEN:

Q. State to the court, Mr. Vincent, what train crew and what engine brought the St. Louis car and other cars from Bridge Junction down to Cairo to the depot.

A. The same engine that brought the crew from Centralia.

Q. State if it is true that the same crew and the same engine that takes the cars out of Cairo to Bridge Junction takes that por-
149 tion of the fast mail train that goes southward over the bridge.

A. Yes, sir.

Q. By the same engine?

A. Yes, sir.

Q. Mr. Vincent, will you please state to the court if you are not always, unless you are sick, at the passenger depot *con* Cairo when the train comes in carrying the St. Louis car and passengers from the fast mail and the United States mail, and also when the train leaves for Bridge Junction?

A. Mostly all the time.

Q. Is it not true that the train that connects with the train which

takes out the passengers for that portion of the fast mail train that goes south is absolutely regular?

A. Yes, sir.

Redirect examination by JOHN M. LANSDEN:

Q. How long has this arrangement been existing by which the crew goes from Cairo to Jackson?

A. In the neighborhood of two months, I should think.

Q. That began some little time after they began stopping the train at Bridge Junction?

A. Yes, sir.

GEORGE W. HATTER, recalled as a witness on behalf of the plaintiss, testifies as follows:

Direct examination by JOHN M. LANSDEN:

Q. I want to ask you this question, Mr. Hatter: State
150 whether or not from the time of your returning to Cairo in December, 1890, the fast mail has brought from Chicago to Cairo and taken southward, or from Mounds Junction across over the bridge, a mail car, a baggage car, and either a coach or a compartment car.

A. Yes, sir.

Q. All the time?

A. No; not all the time; not the entire time since I returned to Cairo.

Q. If not all the time, what was it composed of different from that?

A. A mail car and a combination smoker and baggage car between Chicago and Champaign.

Q. From Champaign southward to this place or to Mounds?

A. It picke/ up a compartment car at Champaign.

Q. From the time you returned to Cairo in 1890, has that southbound fast mail train carried or hauled from Champaign southward to the Mounds and on over the bridge a baggage car, a mail car, and a compartment car or a coach?

A. Yes, sir; a second-class coach.

Q. What time has that train continually carried a compartment car from Chicago?

A. It never ran a compartment car from Chicago. Since January 9th it has run a compartment car from Champaign. From Chicago it takes on a combination coach and baggage car.

Q. Well, Mr. Hatter, what time has the company run a compartment car on the south-bound fast mail train from Champaign continuously?

A. Since January 9th, 1892.

Q. What did they run from Champaign before that?

151 A. A second-class coach.

Q. Was that run continuously from the time it was put on?

A. I cannot state about that. I can only state from the time I came here.

Q. That was in December, 1890?

A. Yes, sir.

Q. What kind of a coach is that which you call a second-class coach?

A. It is a coach that is not fitted up first class. They have none of the accom-odations. It is an ordinary car with simply a closet or a saloon at one end. It has no toilet-room or anything of that kind.

Q. It has the saloons, as you say, in the end?

A. Yes, sir.

Q. It is seated throughout?

A. It has seats.

Q. Is it the usual length?

A. As a rule they are shorter than a first-class coach.

Q. What is the difference?

A. Probably some cars are ten feet.

Q. I am speaking of this one.

A. I cannot state exactly.

Q. This second-class coach, as you call it, has been run continuously from Champaign on this train from the time you returned to Cairo in December, 1890, up to the time of the running of this compartment car?

A. Yes, sir.

152 Q. Mr. Hatter, I will ask you if it is not true since December, 1890, this train has always carried or hauled a car from Chicago southward for the convenience of such passengers as chose to go by that train.

A. Yes, sir.

Q. When was the Illinois Central Railroad bridge built?

A. I think that it was put in use in October, 1891, if I remember the date right.

Q. Were you down at the testing of the bridge?

A. Yes, sir.

Q. Was that not in 1888?

A. My recollection is that it was in 1889.

Q. How long is the northern approach of that bridge, that part which is in Illinois?

A. I am unable to give you the exact figures.

Q. Can you approximate it?

A. I have heard it said that it was a mile and a half long.

Q. Do you know whether the approach is in the limits of the city of Cairo?

A. No, sir; I don't know.

Q. Do you know where the city limits are on the northern boundary?

A. I cannot state exactly; no, sir. I have an idea, but the exact location I cannot say.

Counsel for defendant here waives the right to cross-examine.

J. J. LANE, called as a witness on behalf of the plaintiff, was sworn and testified as follows:

153 Direct examination by JOHN M. LANSDEN:

Q. State your name.
A. J. J. Lane.
Q. Where do you live?
A. I live in Cairo.
Q. How long have you lived here?
A. I have lived here about twenty years.
Q. Are you in the employment of the Illinois Central Railroad Company now?
A. Yes, sir.
Q. How long have you been in its employment?
A. Between eleven and twelve years.
Q. What have you been doing while in that employment?
A. I have been foreman of the passenger yard.
Q. What are you now doing?
A. The same; foreman of the passenger yard.
Q. Where are what you call the passenger yards?
A. They are right down in front of the depot—from Fourth to Second street.
Q. How long have you been foreman in that yard?
A. Eight or nine years.
Q. In the discharge of your duty as foreman are you required to go up to the Bridge Junction?
A. Yes, sir.
Q. And to Mounds?
A. Yes, sir; sometimes.
Q. Are you acquainted with the fast mail train on the Illinois Central?
A. Some.
154 Q. Have you ever ridden upon it?
A. No, sir.
Q. You never rode upon it?
A. No, sir.
Q. Were you ever at Mounds when the train came to Mounds?
A. Yes, sir.
Q. Frequently?
A. No, sir.
Q. What were you doing at Mounds?
A. I went there with a train to meet it.
Q. The short train that some of the witnesses have spoken of?
A. Yes, sir.
Q. What were you doing on that train?
A. We took it out with the engine.
Q. What would you do?
A. We would go and get the engine——
Q. What would you be, the foreman of that engine?
A. Just the simple foreman of that engine.
Q. You mean the switch foreman of that engine?

A. I was supposed to take that engine to the Mounds and the men that worked with her were supposed to go with her.

Q. Did the conductor go?

A. Sometimes.

Q. What was your duty when you went out with that engine and the short train?

A. Sometimes I would run out there as conductor.

Q. How long did you go on that train regular, if you did at all?

A. I always went on that train.

Q. You always went out with that train?

155 A. Yes, sir.

Q. You mean by that when you say you went out with that train always that you went out there since the fast mail was put on?

A. Yes, sir.

Q. Do you go out with it now?

A. No, sir.

Q. When did you cease to go out to the Bridge Junction with it?

A. About the 22nd of December, I think, 1891.

Q. Why did you stop going out with it then?

A. They used another engine.

Q. They used another engine?

A. Yes, sir.

Q. To bring down the cars from the Bridge Junction to Cairo?

A. Yes, sir.

Q. They did not use the same engine that carried the cars up to bring them back?

A. No, sir.

Q. The engine that they used now to take the cars up to the Bridge Junction takes the fast mail on over the river and southward, does it?

A. Yes, sir.

Q. When you went out with this short train to connect with the fast mail train, south bound, there at Mounds, how would the passengers that got on the south-bound fast mail train be transferred to the short train to come into Cairo?

A. Just the same as they are now.

Q. How long had this fast mail train been running before the company began bringing a St. Louis coach into the city?

A. I cannot state that.

156 Q. About how long?

A. I cannot say. I don't know whether it was three months or six.

Q. Is it your best judgment that it was three or four months?

A. About that.

Q. Before they began bringing the St. Louis coach to the station at Cairo, how did they make the transfer of passengers from the south-bound to your short train at Mounds?

A. They came out of one car into the other.

Q. With their baggage?

A. Yes, sir.

Q. The passengers were taken up from Cairo on your train and connected with the fast mail?

A. Yes, sir.

Q. What kind of cars did the fast mail have if you saw any at Mounds?

A. My recollection is that it had a mail car, baggage, and coach.

Q. Now, I will ask you this question: Did the fast mail train at the Mounds which you went out to meet have a baggage car, a mail car, and a coach?

A. Yes, sir; I think it did.

Q. How long has it been since the crew that came out with the engine from Cairo has gone southward from Bridge Junction with the fast mail train? How long has the crew that came out with the two cars from Cairo gone southward with the fast mail from Bridge Junction?

A. Since the 22nd of December. I am not sure, but I think that is the date.

157 Q. Prior to that time the St. Louis coach was brought down from Mounds or Bridge Junction by this engine you took out?

A. Yes, sir.

Q. What kind of an engine was that which you used in the yards and which you took to Mounds with you during all that time?

A. The engine was equipped to handle passenger trains.

Q. For the yard or out on the road?

A. For the yard or on the road, if needed.

Q. How long has it been used in the yard?

A. I think about two or three years, but I cannot say positively.

Q. Has it been used here in the yards all the time?

A. Here and at Mounds.

Q. What other business is it used for besides passenger switch-engine in the yards?

A. Well, sir, whenever we got through handling passenger trains, which was very seldom, we would take it down to the lower end of town if there was anything to do down there.

Q. Was it or was it not a yard engine and used for all purposes all the time?

A. Yes, sir; it was used for yard purposes and for any other purpose it was needed for.

Q. What kind of an equipment did it have on the rear end of the tender?

A. There was a pilot on the rear of the tender, just the same as in front.

Q. Did you have no place on which a person could stand?

A. Yes, sir; you could stand on that.

Q. Do you mean a regular pilot, such as engines have?

158 A. Yes, sir; a regular pilot.

Q. Was there any board across the rear of the tender?

A. Yes, sir.

Q. And a pilot there, too?

A. Yes, sir.

Q. How was the board attached to the pilot?
A. Attached to it?
Q. Yes, sir.
A. Laid right across it. It was a board about six or eight inches width.
Q. What was the board there for?
A. Sometimes you would stand on it when coupling the cars.
Q. Was it permanently attached to the engine?
A. It was screwed on there.
Q. Do other engines that are being used on the road have that kind of attachments?
A. Not that I know of.
Q. Don't you know that they do have that kind of an attachment?
A. Some of them do.
Q. Some of them do?
A. Yes, sir; some engines.
Q. What engines do you know?
A. I can find one at Makanda that way.

Cross-examination by WILLIAM H. GREEN:

Q. This is called a double tender?
A. I suppose so.
Q. Don't you know that the immense suburban service in Chicago is operated by double tenders entirely?
159 A. Yes, sir.

Redirect examination by AUGUS LEEK:

Q. Those double tenders do not have boards on them, do they?
A. I don't know but what they do.
Q. I mean those used in the regular passenger service.
A. I never worked on one of those in Chicago and I can't say.

The plaintiffs here rest their case.

Whereupon the defendant, to maintain the issue of its part, gave in as evidence as follows, to wit:

C. A. BECK, called as a witness on behalf of the defendant, was sworn and testified as follows:

Direct examination by WILLIAM H. GREEN:

Q. State your name and place of residence.
A. Charles A. Beck; I reside at Chicago.
Q. State if you are officially connected with the Illinois Central Railroad Company.
A. I am.
Q. State to the court if you are not now the assistant to the second vice-president.
A. Yes, sir.
Q. How long have you been railroading in any capacity?

A. Over thirty years.
Q. Has that been continuous service?
A. Yes, sir.

Q. In what different capacities have you worked? Will
160 you please state?

A. Clerk, cashier, station agent, transfer agent, division superintendent, assistant to superintendent, superintendent of lines in Illinois, general superintendent, general manager, and my present position.

Q. What was your official position in the Illinois Central Railroad Company in the month- of July and August, 1890?

A. I was general manager—no; let me correct that. I was acting as general manager at that time.

Q. How long after the 1st of July, 1890, did you become general manager?

A. I misunderstood the date. I was general manager in July, 1890.

Q. Were you general manager at the time the train called the fast mail train was organized and put upon the road?

A. Yes, sir.

Q. Under whose immediate supervision and direction on the part of the Illinois Central Railroad Company was it organized and put upon the road?

A. Under mine.

Q. Please state to the court whether that train was organized as a fast mail train or a passenger train.

Objected to. Sustained. Exception.

Q. State to the court the facts and circumstances under which that train was organized and put upon the road and the cause of it being organized and put upon the road.

Objected to. Sustained. Exception.

By the COURT:

161 Q. The witness can state how this train was composed as a matter of fact, how it was operated, and the purpose for which it was operated.

Q. Proceed.

A. The train which was said to leave Chicago and run to New Orleans was composed first of a postal car and a baggage car. It was composed of that on leaving Chicago. It left Chicago at 3.15 a. m. and arrived in New Orleans the next morning at nine o'clock.

Q. What did it start from Chicago carrying?

A. It carried the United States mail and the men attending that and the trainmen.

Q. Was that United States mail which it carried transported by the Illinois Central Railroad Company under special contract with the Government?

Objected to. Sustained. Exception.

Q. Please state to the court whether or not it is true that the schedule for the fast mail train is made by the order of the Post Office Department or not.

Objected to. Sustained. Exception.

Q. State whether or not it is true that the Illinois Central Railroad Company has the right and power to change the schedule of all the trains it has except the fast mail train.

Objected to. Sustained. Excepted.

Q. What I offer to prove is this: That the Government of the United States, through the Post Office Department, has fixed the schedule of running time of the fast mail train, and that the railroad company cannot change that time.

The COURT: The record may show that the objection is
162 sustained to the testimony for the reason that it is not competent for the defendant to enter into the contract with the Government of the United States, whereby it renders itself inculpable of complting with laws of Illinois. Let the record also show an exception to the ruling of the court.

Q. I will ask you to state to the court if it is not true that if from any cause there was no passenger coach or car to be obtained in Chicago the Illinois Central Railroad Company would not send out from Chicago the fast mail train with nothing but the mail car attached.

Objected to. Sustained. Exception.

Q. I will ask you to state to the court whether or not — is true that the Illinois Railroad Company could send out any other passenger train from Chicago if any passenger cars should by any reason be destroyed.

Objected to. Sustained. Exception.

Q. I will ask you to state to the court whether or not it is true that you would send out the fast mail train whether you had any passenger coaches or cars, and that you would not send out a passenger train unless you had passenger coaches or passenger cars of some kind.

Objection. Sustained. Exception.

Q. State to the court whether or not the fast mail train is one of the regular passenger trains of the Illinois Central railroad.

Objected to. Sustained. Exception.

Q. Will you please state whether or not there are any difference between the trains which we have been speaking of called the fast mail train and the regular passenger trains of the Illi-
163 nois Central railroad?

Objected to. Sustained. Exception.

Q. Please state to the court if the fast mail train stops anywhere

between Chicago and New Orleans for meals, and whether it has a dining car attached and whether it has a buffet car attached.

Objected to. Sustained. Exception.

A. A fast mail train No. 1, formerly called No. 41, stops nowhere for meals. It has no dining car or no buffet car.

Q. Please state whether or not the fast mail train formerly called No. 41 is equipped as a regular passenger train of the Illinois Central Railroad Company.

Objected to. Sustained. Exception.

Q. By the COURT: The court holds that this witness may state how this train is equipped.

Q. I will ask you, Mr. Beck, to state to the court if the schedule of the regular passenger train of the Illinois Central Railroad Company are made up and regulated and altered and changed by the Illinois Central Railroad Company.

Objection. Sustained. Exception.

A. They are, sir.

Q. Please state to the court if the time schedule for the fast mail train can be changed by the Illinois Central Railroad Company at its own option and without consent of the Government.

Objected to. Sustained. Exception.

Q. I will ask you to state to the court whether or not the passengers coming to Cairo on the fast mail train are scheduled to arrive at Cairo sooner or later than passengers are scheduled to arrive in Cairo on No. 5.

A. Earlier.

164 Q. How much earlier?

A. Twenty-five minutes.

Q. Please state to the court what the fast mail train formerly called No. 41 is made up in Chicago for—for what purpose.

Objected to. Sustained. Exception.

Mr. GREEN: Let the record show that the respondent offers to prove as follows: That the fast mail train is made up in Chicago as a special train and not to carry passengers.

Objected to. Sustained. Exception.

Q. You may state to the court whether or not the fast mail train referred to is made up for the special purpose of carrying the United States mails.

Objected to. Sustained. Exception.

Q. I will ask you to state to the court whether or not it is true that at Duquoin the fast mail train couples on to that portion of the Cairo Short line from St. Louis which is pulled into Cairo and all the passengers for Cairo are placed in a first-class coach of the train made up at Duquoin, and the United States mail is carried on said train to the depot in Cairo, and at Bridge Junction that

portion of the fast mail train bound south of Cairo is separated from the train and hauled by a fresh engine and proceeds over the bridge; the balance of the train is hauled by the same engine that hauled the entire train from Duquoin, runs down to the city of Cairo and stops at the station-house on block one, in said city. State whether or not that is true.

A. Yes, sir; that is true except that portion with reference to the mail. The mail is not brought to Cairo in the same train that left Duquoin. The mail is transferred into the car at Bridge
165 Junction. The mail from No. 1, formerly No. 41, is transferred to the car at Bridge Junction.

Q. And is brought into Cairo?

A. Yes, sir.

Cross-examination by JOHN M. LANSDEN:

Q. Mr. Beck, you have stated that at Duquoin all the passengers on the fast mail southward are put in the St. Louis coach and brought on to Bridge Junction. Do you know that, as a fact, passengers brought on to Cairo or Bridge Junction are all put in the St. Louis coach?

A. It is not always the case. They are all notified of it, but sometimes they do not change till they get down the road.

Q. Do you know whether or not that train which took the St. Louis coach at Duquoin stops at any and all stations from there southward and puts off St. Louis passengers?

A. Yes, sir; they stopped at a number of them.

Q. It stopped at the station where those passengers from St. Louis desired to alight?

A. Yes, sir; I think it does.

Q. You have stated that when No. 41 was first put upon the road it left Chicago with a postal car and a baggage car?

A. Yes, sir.

Q. How long after it was first put on did it bring any other car besides those two cars from Chicago?

A. My recollection is that it was within a week; that is my recollection.

Q. At first it brought but two cars out of Chicago?

A. Yes, sir.

Q. And within a week afterwards it brought three?

166 A. Yes, sir; it brought those two cars and an additional one.

Q. What kind of a car was that?

A. A passenger car.

Q. How far southward did it bring that car?

A. It carried it on to New Orleans.

Q. How long did that train run that way with those three cars, including the St. Louis coach?

A. My recollection is till January, 1891; 1891.

Q. How long did you continue after January, 1891, to leave Chicago with a postal car, a baggage car, and a coach?

A. I think, up to January 1st, this year; some time in the fall of 1891.

Q. Can you speak more accurately or definite than some time in the fall?

A. I think it was the first of October.

Q. Then, from January, 1891, the fast mail train took out of Chicago daily for New Orleans a postal car, a baggage car, and a coach?

A. Yes, sir; postal car, baggage car, and a coach.

Q. Describe the baggage car.

A. A full baggage car.

Q. Do you remember how long it was after you put on the fast mail train that you began taking the St. Louis coach at Duquoin?

A. Yes, sir.

Q. How long after?

A. January 11th, 1891.

Q. When was the fast mail put upon the road?

A. The first of July, 1890.

Q. Prior to January 11th, 1891, how did you do the transferring of passengers at Mounds for those desiring to come to Cairo?

167 A. They were transferred to a train sent to Cairo to make connection at Mounds.

Q. Would they get out of the car brought there by the fast mail?

A. Other than the St. Louis passengers; they were transferred by a train sent from here to Mounds for that purpose. There was no St. Louis passengers on that train.

Q. No St. Louis passengers on that train?

A. No; not from St. Louis.

Q. Prior to January 11th, 1891?

A. Yes, sir; that is my recollection now.

Q. Prior to that time how were the passengers that were brought on the fast mail to the Mounds transferred to the short train that went up prior to January 11th?

A. They were transferred from car to car—from one car across the platform to another. They left the car of the fast mail train and got into the car of the short train and came here to Cairo.

Q. I suppose you heard a portion, if not all, of Mr. Hatter's testimony.

A. I heard a great portion of it.

Q. State what you know with reference to the fast mail train taking on a coach at Champaign and bringing it southward.

A. I don't remember that, sir.

Q. Do you know whether or not it did take a coach at Champaign and bring it on south?

A. I have heard so, but I don't know myself.

Q. You have no knowledge of that?

A. No; it was only temporary if it was ever done.

Q. How do you know it was temporary if you did not know it was done?

168 A. I saw the train frequently, and it had not that equipment.

Q. You simply mean to say that if that was done you had no knowledge of it and it must have been a temporary arrangement?

A. I heard that one time that one was out on for a short time.

Q. Do you know how far that coach what was put on at Champaign was brought?

A. No, sir.

Q. I believe you stated in your direct testimony that the train did not stop for meals anywhere.

A. Not for full meals; no, sir.

Q. What kind of meals did it stop for?

A. It makes a stop at Holly Springs about five minutes for lunch.

Q. Do you know whether this train was accustomed to stop at Mounds for meals?

A. It did at one time.

Q. How long?

A. Twenty minutes.

Q. For what period of time?

A. I don't know that I can tell now; it did when it first started out.

Q. Can you give us any odes as to how long it kept that up?

A. It kept that up until the 1st of November, 1890.

Q. When was the hotel built at Mounds, the one that burned?

A. It started a little after the bridge was completed.

Q. Was it open for use when the fast m-il was put on?

A. I thi-k it was.

Q. Is it not a fact that the fast -ail train stopped there for meals up to the time the building was burned?

A. Well, sir, I don't know that it did. I cannot answer that.

169 Q. After the hotel burned do you know whether it stopped at any point north of Duquoin or any other place for meals?

A. No, sir; I don't know.

Q. Did it not stop at Centralia for breakfast?

A. I think not.

Q. At no tije?

A. I think at no time.

Q. I will ask you the question again in regard to its stopping for meals. I will ask you if the south-bound fast mail train did not stop at Mounds for meals up to the time of the burning of the hotel and after that at Duquoin up to about November, 1891.

A. I don't remember the date of the burning of the hotel, sir. I cannot answer.

Q. What do you know of its having stopped at Duquoin for meals after the burning of the hotel?

A. I don't remember of its doing so.

The court holds that counsel for defendant may show by this witness or by any other witnesses that know the facts connected with the running of the train its equipments, what it carries, what it does not carry, where it stops, where it does not stop, the number

and character of cars or coaches and what it carries in them, how these coaches were arranged throughout and equipped as facts, but the court holds further that it is not proper for the defendant to show what the object was or the intention was of the company, in the first place, to organize and out them on the road or what the main controlling motives were that induced the defendant to start this train.

170 Redirect examination by WILLIAM H. GREEN:

Q. You may state, Mr. Beck, to the court wherein train No. 41, the fast mail train, differs from trains three and four, in what respects, and in what particulars does the fast mail train in its equipments, and all the circumstances you can think of where it differs from Nos. 3 and 4.

A. It differs in its make-up, its accommodations and conveniences.

Q. State what its make-up is and what it consists of.

A. Well, as compared with the vestibule train, the vestibule train is made up of a baggage car, a general combination car, baggage and smoker and second-class car, and a through first-class coach and sleeping from Chicago that are vestibuled. The train is made up in Chicago. This No. 41 is made up in Chicago and is composed of a postal car and a combination car and nothing else. There is a great deal of difference in the quality of cars attached to the vestibule and the fast mail, and then the vestibule has the convenience of meals. The fast mail train is attached to a postal car, a combination car, and a compartment car, and there is not a first-class coach on the train—that is, the fast mail. No other through train is devoid of a first-class passenger car nor has a combination car. Other passenger trains have provisions for furnishing passengers meals en route where the length of the run covers many hours or requires meals.

Recross-examination by JOHN M. LANSDEN:

Q. How many trains do you run from Chicago and have been during the last year or two which have carried passengers from Chicago to Cairo or to the Mounds?

171 A. At present there are four.

Q. Do all those trains carry the United States mail?

A. Not the entire distance; not the entire length of the line that they run.

Q. How many of them carry United States mail over the whole line from Chicago to Cairo?

A. Three of them.

Q. Does the other carry the United States mail over a portion of the line?

A. Yes, sir.

Q. What number is that?

A. No. 3; old No. 45, the limited vestibule.

THE LAW ASSOCIATION OF PHILADELPHIA.

Q. No. 3 now?
A. Yes, sir.

It is admitted by the parties to this suit that J. G. Hartigan will testify in substance the same as witness Charles A. Beck.

The following stipulation is here read in evidence:

EXHIBIT D, VICKERS.

STATE OF ILLINOIS, }
County of Alexander. }

Of the February Term of the Alexander Circuit Court, 1892.

172 THE PEOPLE *ex Rel.* BUTLER }
vs. } Mandamus.
ILLINOIS CENTRAL RAILROAD COMPANY. }

It is agreed and stipulated that the foot of the bridge approach called Bridge Junction to the Ohio river at Cairo, referred — in this case, is three thousand three hundred and twenty-four feet (3,324 feet) north from the corporate limits of the city of Cairo, and that the said bridge approach begins rising immediately on a grade of about 35 feet to the mile, and when it reaches the said corporate limits the said approach is about 20 feet above the ground and continues to rise on said grade till it reaches the said bridge, and that said approach passes over the land of the said respondent, which land is within the corporate limits of the city of Cairo and is an uninhabited part of the said city, and that the entire length of said approach is seven thousand nine hundred and fifty-five (7,955) feet, which is about 35 feet over one mile and a half, and that the said land over which said approach is built extends within the corporate limits of the city of Cairo from the northern limits of said city to the said bridge a distance of four thousand six hundred and thirty-one (4,631) feet, and that the said passenger depot on block No. one, in the city of Cairo, is about two miles distant from said bridge, and that prior to the building of said bridge the respondent ran all its passenger trains to the said passenger depot on the corner of Second and Ohio Levee streets, in the city of Cairo.

JOHN H. MULKEY AND
LANSDEN & LEEK,
Attorneys for Petitioners.
GREEN & GILBERT,
Attorneys for Respondent.

February 11, 1892.

173 The defendant offered and read in evidence a portion of the House Journal of Illinois for the year 1879, of the 31st General Assembly of the State of Illinois, so much of said volumn as refers to the passage of the bill for an act in relation to the amendment of an act in relation to the fencing and operating railroads as appears on pages 504, 509, 517, 562, 607, 608, 680, 684, 685,

703, 704, 737, 995, 996, 1036, and 1060, being section 88 of the Revised Statutes of the State of Illinois as it appears in An act to amend an act entitled An act in relation to fencing and operating railroads, as appears on above pages offered in evidence by the defendant.

Journal of the House of Representatives, 1879.

(Page 504.)

"Mr. Graham introduced house bill No. 833, a bill for 'An act to amend "An act in relation to fencing and operating railroads," approved March 31st, 1874, in force July 1st, 1874.'

The title was read and the bill referred to the committee on railroads."

(Page 509.)

"Mr. Thompson, of Cook, from the committee on railroads, made the following report:

The committee on railroads, to whom was referred house bill No. 833, being a bill for 'An act to amend section sixty-three of "An act in relation to fencing and operating railroads," approved
174 March 21st, 1874, in force July 1, 1874,' respectfully beg leave to report the same back to the house and recommend that it do pass.

And the report of the committee was adopted and the bill ordered to its first reading."

(Page 517.)

"On motion of Mr. Graham, house bill No. 833, for 'An act to amend section sixty-three of "An act in relation to fencing and operating railroads," approved March 31st, 1874, in force July 1, 1874,' was read at large a first time and ordered to a second reading."

(Page 562.)

"On motion of Mr. Graham, house bill No. 833, for 'An act to amend section sixty-three of "An act in relation to fencing and operating railroads," approved March 31st, 1874, in force July 1st, 1874,' was read at large a second time.

Mr. Graham offered the following amendment, which was adopted: Amend section 63, line 4, by inserting the word 'passenger' between the words 'regular' and 'trains,' so that it will read, 'provided all regular passenger trains.' The bill was ordered engrossed for a third reading."

(Pages 607 & 608.)

"Mr. Wilson, from the committee on enrolled and engrossed bills, made the following report:

Mr. Wilson, from the committee on engrossed and enrolled bills, reports that bills of the following titles have been correctly engrossed and are returned herewith, to wit:

House bill No. 833, a bill for 'An act to amend section
175 sixty-three of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874.'"

(Page 680.)

"By consent house bill No. 833 was taken up.

Mr. Graham moved to reconsider the vote by which this bill was ordered to a third reading; which motion prevailed."

(Pages 684 & 685.)

"House bill No. 833, for 'An act to amend section 63 of "An act in relation to fencing and operating railroads," approved March 31st, 1874, in force July 1st, 1874,' was taken up.

Mr. Graham offered the following amendment, which was adopted:

Amend the title of the bill by inserting the words 'twenty-five' in lieu of the words 'sixty-three.'

Also amend the bill by striking out the words 'sixty-three' and figures '63' wherever they occur in the bill and insert in lieu thereof the words 'twenty-five' and the figures '25.'

The bill was ordered engrossed for a third reading."

(Pages 703 & 704.)

"Mr. Wilson, from the committee on engrossed and enrolled bills, reports that bills of the following titles have been correctly engrossed and are returned herewith, to wit:

House bill No. 833, a bill for An act to amend section twenty-five of 'An act in relation to fencing and operating railroads,' approved March 31, 1874, in force July 1st, 1874."

176 (Page 737.)

"House bill No. 833, for 'An act to amend section sixty-three of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874' (having been printed), was read at large a third time.

And the question being 'Shall this bill pass?' it was decided in the affirmative—yeas, 83; nays, 20.

Those voting in the affirmative are:

Messrs. Allen, of Warren; Barry, Bolt, Bower, Bisbee, Black, Bert, Butterworth, Carter, of Johnson; Churchill, Chase, Cockle, Core, Cramer, Crooker, Crostwait, Davis, Day, Dysart, Ehrhardt, Elliott, English, Ficklin, Frew, Graham, Granger, Gray, Hall, of Gallatin; Halliday, Hamilton, Harts, Hinkley, Jackson, Jennings, Johnson, Jones, of Washington; Kouka, Layman, Lyon, Marston, Mason, Mathews, McCreery, McFie, McKinley, Meier, Mileham, Meilback, Mock, Morrison, Mass, Murrey, Neff, O'Malley, Orendorff, Pierson, Powell, Pratt, Provert, Robinson, of Jackson; Ritchey, Samuel, Savage, Scariett, Scroggs, Shaw, Sherman, Sloan, Smith, Snigg, Taylor, of Winnebago; Thomas, Thomason, Tresdel, Veile, Walsh, Warren, Webber, Wheeler, Zimmerman, Mr. Speaker—83.

Those voting in the negative are:

Messrs. Abraham, Bowen, Brigham, Byers, Eldridge, Ewing, Keniston, Latimer, Lovel, Miles, Nichols, Otman, Ranney, Seitler, Spencer, Struckman, Taylor, of Cook; Tyler, Wilson, Wright, of Du Page—20.

Ordered that the title be as aforesaid, and that the clerk inform the senate thereof and ask their concurrance therein."

(995 & 996.)

"A message from the senate, by Mr. Paddock, secretary.

177 Mr. SPEAKER: I am directed to inform the house of representatives that the senate has concurred with them in the passage of bill- of the following titles, to wit:

House bill No. 833, a bill for 'An act to amend section 25 of "An act in relation to fencing and operating railroads," approved March 31, 187–, in force July 1, 1874.'"

(Page 1036.)

"Mr. Wilson, from the joint committee on enrolled bills, reports that bills of the following titles have been correctly enrolled, and on the 29 of May, 1879, laid before the governor for his approval, to wit:

House bill No. 833, 'An act to ament se-tion 25 of *an* "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874.'"

(Pages 1059 & 1060.)

"A message from the governor, by Edward F. Leonard, private secretary."

Mr. SPEAKER: I am directed by the governor to inform the house of representatives that he has approved and signed bills with the following titles, to wit:

House bill No. 833, 'An act to amend section 25 of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874.'"

178 The entire volume known as the House Journal of the House of Representatives of the 31st General Assembly of the State of Illinois for the year 1879 objected to on the ground that it is irrelevant, and for the further reason, if it were relevant, it is not the best evidence.

Objection overruled. Exception.

And the official volume of the House Journal of the session of 1879 is made a part of the evidence for the defendant in this case by reference.

J. H. JONES, recalled as a witness on behalf of the defendant, testified as follows:

Direct examination by WILLIAM H. GREEN:

Q. I will ask you if you have refreshed your memory from any source so as to be able to state the difference between the arrival of the St. Louis passenger on No. 5 and on the fast mail and the connection at Bridge Junction.

A. When the St. Louis passenger coach came in on No. 5 it came in here at 2.50; that was on January 15th, 1891, and at the present time she comes in at 2.00 o'clock.

Counsel for plaintiff- here waive the right to cross-examine.

The defendant here rests its case.

Whereupon the plaintiffs offered the following evidence in rebuttal:

A. F. TAYLOR, recalled as a witness on behalf of the plain-
179 tiffs, testified as follows:

Direct examination:

Q. State your name to the court.

A. A. F. Taylor.

Q. I believe you stated in your examination yesterday that you were a fireman on the south-bound fast mail No. 41.

A. Yes, sir.

Q. You may state whether that train ever stopped at Mounds Junction to take meals at any time.

A. It did.

Q. You may state whether or not it was taking meals at Mounds Junction when the boarding-house was destroyed by fire.

A. To the best of my recollection, I think they did.

Q. Do you know what time the fire occurred?

A. No, sir; I do not.

Q. You may state if after that building burned down they stopped to take meals at any other place; and, if so, where.

A. I think for some time they did not get meals. That is my recollection. After the run was cut in two and we got to going over the river, I don't know when that was, but I know we commenced taking meals at Duquoin.

Q. You may state, to the best of your recollection, how long you continued taking meals at Duquoin.

A. To the best of my recollection, the last time I ran in there was some time late in November, 1891, and we still stopped there before I gave up the run.

Q. It is your impression that the south-bound fast mail No. 41 stopped at Duquoin for meals as late as November, 1891?

180 A. Yes, sir; that is my recollection.

Counsel for defendant here waive the right to cross-examine witness.

All portions of the House Journal that in any way relate to the action of the house of representatives concerning the passage of the act above referred to is by agreement to be considered in evidence.

The above was all the evidence heard in this case.

A. K. VICKERS. [SEAL.]

March 29th, 1892.

STATE OF ILLINOIS:

Supreme Court, Central Grand Division, June Term.

ILLINOIS CENTRAL RAILROAD COMPANY, Appellant, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, Appellees. } Appeal from Alexander and Transferred by Agreement to Central Grand Division.

181 And now the said appellant comes and says there are manifold errors appearing in said record and assigns the following errors, namely:

1. The court erred in sustaining the demurrer to the amended answer.
2. The court erred in excluding proper evidence offered by the defendant.
3. The court erred in finding *fro* the plaintiffs.
4. The court erred in rendering judgment for the plaintiffs.
5. The court erred in the form of the judgment.
6. The court erred in overruling motion for new trial.
7. The court erred in admitting improper evidence for the plaintiff.
8. The court erred in ordering the issuance of the *preemptory* writ of mandamus.

GREEN & GILBERT,
Attorneys for Appellant.

Know all men by these presents that we, Illinois Central Railroad Company, principal, and J. H. Jones and Willia- H. Green, sureties, of the county of Alexander and State of Illinois, are held and firmly bound unto The People of the State of Illinois in the relation of William N. Butler, also of the same county and State, in the penal sum of three hundred dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Witness our hands and seals this 22nd day of February, A. D. 1892.

182 The condition of the above obligation is such that whereas the said The People of the State of Illinois did, on the 13th day of February, A. D. 1892, in the circuit court of Alexander county, in the State aforesaid, and of the February term thereof,

A. D. 1892, recover a judgment against the above-bounden Illinois Central Railroad Company in an action for mandamus ordering the issuance of the peremptory writ of mandamus against said company, besides costs of suit, from which said judgment of the said circuit court of Alexander county the said Illinois Central Railroad Company has prayed for and obtained an appeal to the supreme court of said State:

Now, therefore, if the said Illinois Central Railroad Company shall duly prosecute its said appeal with effect, and, moreover, pay the amount of the judgment, costs, interests, and damages rendered and to be rendered against it in case the said judgment shall be affirmed in said supreme court, then the above obligation to be void; otherwise to remain in full force and virtue.

Taken and entered into before me, at my office, in Cairo, this 27th day of February, A. D. 1892.

EDMUND S. DEWEY, *Clerk.*
ILLINOIS CENTRAL RAILROAD COMPANY, [SEAL.]
By WILLIAM H. GREEN, [SEAL.]
Its Attorney-in-fact.
J. H. JONES. [SEAL.]
WILLIAM H. GREEN. [SEAL.]

STATE OF ILLINOIS, }
Alexander County, } ss:

I, Edmund S. Dewey, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that the foregoing is a true, perfect, and complete transcript of the proceedings
183 had and orders made and entered of record in said cause by said court, as copied by me from the records and files in my office, in the case of The People of the State of Illinois *ex rel. vs.* The Illinois Central Railroad Company.

In testimony thereof I have hereunto set my hand and affixed the seal of said court, at the court-house, in the city of Cairo, this 30th day of April, A. D. 1892.

EDMUND S. DEWY, *Clerk.*

184 & 185 And be it further remembered that afterwards, to wit, on the seventh day of June, in the year of our Lord one thousand eight hundred and ninety-two, the following, among other, proceedings were had in said court:

ILLINOIS CENTRAL R. R. Co. *vs.* THE PEOPLE *ex Rel.* } Appeal from Alexander.

On this day came the appellant herein, by attorney, and moves the court for an extention of time in which to file briefs, and the court, not being sufficiently advised in the premises, takes said motion under advisement.

And be it further remembered that afterwards, to wit, on the eighth day of June, in the year of our Lord one thousand eight hundred and ninety-two, the following order was made by said court:

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
THE PEOPLE. } Appeal from Alexander.

On this day came again the part*his* herein, and, the court being now sufficiently advised in the premises, it is ordered by the court that appellant's time to file reply herein be and the same is extended ten days.

And be it further remembered that afterwards, to wit, on the tenth day of June, in the year of our Lord one thousand eight hundred and ninety-two, the following order was made in said court:

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
186 THE PEOPLE.

On this day come the said parties, by their attorneys, and this being one of the days set apart for the call of the docket under the rules or orders of the court for this term, and this cause coming on now to be heard, the appellant having entered motion to reverse the judgment and remand said cause and for costs, and the appellee having entered motion to affirm the judgment herein and for costs and for *procedendo*, and said motions being taken under advisement for final hearing, and the clerk reporting to the court that said cause is now ready to be taken on the call of the docket, it is ordered by the court that this cause be now submitted upon the record, abstracts, briefs, and arguments filed and to be filed herein under the rules or order of the court; and it is further ordered by the court that this cause be now taken under advisement for final hearing.

And be it further remembered that on, to wit, the second day of November, in the year of our Lord one thousand eight hundred and ninety-two, an opinion was filed in said supreme court in said cause in words and figures following, to wit:

Statement.

MAGRUDER, *J.*:

This is a petition for a mandamus filed on April 17, 1891, in the circuit court of Alexander county in the name of The People, by the State's attorney of that county, against The Illinois Central Railroad Company to compel that company to cause all of its regular passenger trains coming into the city of Cairo to be brought down to the passenger station at the intersection of Second and Ohio Levee streets, in that city, and there stopped a sufficient
187 length of time to receive and let off passengers with safety. Amendments were made to the petition, and a demurrer to

the amended petition was overruled. Amendments were also made to the answer. The circuit court sustained a special demurrer to certain paragraphs of the amended answer, and, replication being filed to certain other paragraphs thereof, a jury was waived and the cause submitted to the court for trial, by agreement, upon the issues of fact. The issues of fact were found in favor of the petitioner and judgment was rendered in accordance with the prayer of the petition. From such judgment the present appeal is prosecuted.

Opinion.

MAGRUDER, *J.*:

1. One of the defenses made by the respondent below, and the disallowance of which is here assigned as error, was that section 88 of chapter 114 of the Revised Statutes, being section 25 of the act of 1874 in relation to fencing and operating railroads as amended in 1879, did not pass the lower house of the legislature and never became a law.

Section 25 of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874, read as follows: "Every railroad corporation shall cause its passenger trains to stop, upon the arrival at each station advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety" (Hurd's Revised Stat. of 1874, chap. 114, sec. 63, page 811). Among the laws of 1879, printed by authority of law and certified by the secretary of state, is the following amendatory act:

"An act to amend section 25 of 'An act in relation to fencing
188 and operating railroads,' approved March 31, 1874, in force July 1, 1874; approved May 29th, 1879, in force July 1, 1879.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That section 25 of an act entitled 'An act in relation to fencing and operating railroads,' approved March 31, 1874, in force July 1, 1874, be amended so as to read as follows:

SECTION 25. (Time of stop at stations.) Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station, advertised by such corporation as a place for receiving and discharging passengers, upon and from such trains, a sufficient length of time to receive and let off passengers with safety: Provided, all regular passenger trains shall stop a sufficient length of time at the railroad station of county-seats to receive and let off passengers with safety. Approved May 29th, 1879." (Laws of Ill., 1879, page 225.)

The amendment of 1879 of section 25 of the act of 1874 was the proviso at the end of the section. It is claimed that the amendatory act above set forth was not adopted in accordance with the require-

ments of the constitution, and that therefore the said proviso is not now in force. The provision of the constitution which is alleged to have been violated in the passage of the act is the first clause of section 13 of article 4. That clause required that "every bill shall be read at large on three different days in each house."

It is not denied that the amendatory act received the signatures of the speakers of both houses and the approval of the governor.

Such verificatian is *prima facie* evidence of its validity as a
189 legislative enactment; but it is the settled law of this State that the journals of either branch of the legislature may be resorted to for the purpose of overcoming such *prima facie* evidence. It may be shown from the journals that an act was not passed in the mode prescribed by the constitution (Spangler *vs.* Jacoby, 14 Ill., 297; Turley *vs.* The County of Logan, 17 Ill., 151; Prescott *vs.* The Board of Trustees, 19 Ill., 324; The People *ex rel. vs.* Starne, 35 Ill., 121). Accordingly upon the trial below the respondent introduced in evidence the official journal of the house of representatives of the Thirty-first General Assembly, and read therefrom so much as refers to said amendatory act of 1879. It was thereby proven that on March 25, 1879, Mr. Graham introduced house bill No. 833, a bill for "An act to amend 'An act in relation to fencing and operating railroads,' approved March 31st, 1874, in force July 1, 1874," and the title was read and the bill was referred to the committee on railroads; that on March 26 that committee made the following report: "The committee on railroads, to whom was referred house bill No. 833, being a bill for 'An act to amend section sixty-three of "An act in relation to fencing and operating railroads," approved March 31st, 1874, in force July 1, 1874,' report the same back to the house and recommend that it do pass;" that said report was adopted and the bill ordered to its first reading; that on March 27 house bill No. 833, for "An act to amend section 63 of 'An act in relation to fencing and operating railroads,' approved March 31, 1874, in force July 1, 1874," was read at large a first time and ordered to a second reading; that on April 7 house bill No. 833, for "An act to amend section 63," &c., as last above described, was read at large a second time, and an amendment was offered and adopted amending section 63,

line 4, by inserting the word "passenger" between the
190 words "regular" and "trains," and the bill was engrossed for a third reading; that on April 12 the committee on enrolled and engrossed bills reported that "house bill No. 833, a bill for 'An act to amend section 63,'" &c., as last above described, had been correctly engrossed and was therewith returned; that on April 23 "house bill No. 833, for 'An act to amend section 63,'" &c., as last above described, was taken up out of its order by consent and the following amendment was offered and adopted: "Amend the title of the bill by inserting the words 'twenty-five' in lieu of the words 'sixty-three' and figures 63; also amend the bill by striking out the words 'sixty-three' and figures '63' wherever they occur in the bill and insert in lieu thereof the words 'twenty-five' and the figures '25;'" that the bill was thereupon engrossed for a third reading;

that on April 25 the committee on engrossed and enrolled bills reported that "house bill No. 833, a bill for 'An act to amend section twenty-five of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874,'" had been correctly engrossed and was therewith returned; that on April 30 "house bill No. 833, for 'An act to amend section sixty-three of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874' (having been printed), was read at large a third time, and the question being, Shall this bill pass? it was decided in the affirmative—yeas (names), 83; nays (names), 20; ordered that the bill be as aforesaid, and that the clerk inform the senate thereof and ask their concurrence therein;" that on May 28 the senate reported to the house that it had concurred with them in the passage of "house bill No. 833, a bill for 'An act to amend section twenty-five of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July
191 1, 1874;'" that on May 29, 1879, the joint committee on enrolled bills reported that "house bill No. 833, 'An act to amend section twenty-five of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874,'" had been correctly enrolled and had been on that day laid before the governor for his approval; that on May 30 the governor sent a message to the house informing it that he had approved and signed "house bill No. 833, 'An act to amend section twenty-five of "An act in relation to fencing and operating railroads," approved March 31, 1874, in force July 1, 1874.'"

The position of the counsel for the appellant is that a bill numbered 833, for an act to amend section 63, &c., was read three times in the house and passed by it, but that a bill to amend section twenty-five of the act in question was not read three times nor passed by the house. It is, therefore, argued that the amendatory act of 1879, which was an act to amend section 25, never became a law. We are unable to concur in the view that the act of 1879 was not legally adopted.

The original act of March 31, 1874, in relation to fencing and operating railroads, contained but 39 sections when standing by itself and apart from any other act upon the general subject of railroads. It was first published in the revision of the statutes issued in 1874, denominated "The Revised Statutes of the State of Illinois, A. D. 1874." Chapter 114 of this revision is entitles "Railroads and Warehouses," and contains a number of acts of the legislature upon those general subjects. In the arrangements of these acts in the chapter the original numbers of the sections of each separate act are retained, but new numbers are given to the sections of the various acts, taken as a whole and considered as parts of the
192 chapter. These new numbers run from 1 to 147, inclusive. It follows that each section in chapter 114 of the revision contains two numbers, one being the original number of the section in the original act and the other being the number of the section as a part of a collection of acts constituting a chapter with a common designation. By reference to the Revised Statutes of 1874 it will be

seen that section 25 of the original act of March 31, 1874, is numbered 63 as a part of chapter 114. The section as it there appears has two numbers, to wit, 63 and 25. Both numbers were intended to designate the same subject-matter. It is easy to see how the committee who reported the amendment back to the house were misled into describing the section as section 63 in view of the fact that it was so numbered in the revision of 1874. There was in 1879 no other authorized publication of the act of March 31, 1874, except the Revised Statutes of 1874. Section 1 of an act to provide for the publication of the Revised Statutes of the State, approved March 30, 1874, in force July 1, 1874, directed that immediately after the close of the session of 1874 all the general statutes of the State which would be in force on July 1, 1874, should be compiled and published in a volume to be entitled "The Revised Statutes of the State of Illinois, A. D. 1874." Section 2 provided that the revised acts of 1871–'2 and 1873–'4 should "be annotated so as to show, by proper reference, the original acts and sections therein." Section 17 directed that the secretary of state should print in pamphlet form the acts passed at that session not embraced in the Revised Statutes, and that he should not include therein those published in the Revised Statutes. (Rev. Stat. of 1874, pages 811 & 1046.)

While it was tec-nically incorrect to designate the amenda-
193 tory act in the title thereof as an act to amend section 63 of the original act in view of the fact that said original act contained no section 63, yet, at the same time, there was a certain section of the original act which was designated as section 63 in the legally authorized publication of the Revised Statutes of the State. The section so designated as section 63 of chapter 114 was the same as section 35 of the original act. There can, therefore, be no uncertainty as to what the legislature intended to amend, nor is it possible that any member of the legislature could have been misled by the title of the amendatory act. The great object of the rules and maxims of interpretation is to discover the true intention of the law; and whenever that intention can be indubitably ascertained from allowed signs and be admitted means courts are bound to give it effect. (Potter's Dwarris on Stat. and Cons., page 178; County of St. Clair *vs.* Bolamn, 15 Brad., 279.)

The constitution provides that "no law shall be * * * amended by reference to its title only, but * * * the section amended shall be inserted at length in the new act" (Cons., art. 4. sec. 13). The section here intended to be amended was the section of the act of 1874 which had reference to the stoppage of passenger trains at stations, and that section, together with the proviso which constituted the amendment of it, was set out in full in the amendatory act and was read on three different days in the house, and it will be presumed to have been read on three different days in the senate, as the record contains no proof to the contrary (Larrison *vs.* P. A. & D. R. R. Co., 77 Ill., 11). It is not pretended that there were two different bills having the same number. There was but one house bill No. 833. This designation was kept unchanged
194 in the passage of the bill through both houses and was affixed

to the act when it was reported as enrolled and also when it was reported as approved by the governor. The identity of the body of the bill to every step, from its introduction in the house until it was finally declared a law, is thus sufficiently established (Larrison *vs.* P. A. & D. R. R. C., *supra;* Plumer *vs.* The People, 74 Ill., 361; Walnut *vs.* Wade, 103 U. S., 683). After the second reading the number of the section was changed by amendment from 63 to 25, and thereafter the bill came before the house four times as a bill to amend section 25. As the bill preserved its identity by holding its number, "833," it cannot be said that it was not constitutionally passed (Walnut *vs.* Wade, *supra*). Whether the title be regarded as incorrectly designating the number of the section or the amendment as making a change in the title, neither the wrong designation nor the change were matters of substance, nor were they calculated to mislead as to the subject of the bill, and consequently the one may be regarded as merely a clerical mistake, in nowise imparing the validity of the law, and, as to the other, it may be said that there is no provision of the constitution which requires a bill to preserve the same title through all its stages in both houses (Plummee *vs.* People, *supra;* Walnut *vs.* Wade, *supra*). "An unessential false description can never defeat a grant, contract, or other instrument, nor should it defeat a statute." (School Directors *vs.* School Directors, 73 Ill., 279; Binz *vs.* Weber, 81 Ill., 288)

The appellant claims that it has not violated section 88 of the railroad law by failing to run passenger trains to the station at Cairo, which is the county-seat of Alexander county. In order to show that appellant was guilty of such violation, appellee introduced certain testimony to prove that a certain train, known
195 as the "fast mail train," did not stop at the passenger station in Cairo. The company denies and the people affirm that the "fast mail train" was a "regular passenger train" within the meaning of said section 25 or 63, now known as section 88 of the general law in regard to railroads and warehouses. (Starr & Cur. Ann. Stat., chap. 114, sec. 88, page 1943.)

In the year 1855 the appellant company completed the construction of itd road and located its regular passenger station or depot in what is now the city of Cairo, at a point something over a quarter of a mile from the junction of the Ohio and Mississippi rivers, known as the intersection of Second and Ohio Levee streets. The said station has been there maintained and continuously used for a period of more than thirty-six years. The city of Cairo was incorporated in 1857 and became the county-seat in 1859. In the year 1889 a railroad bridge was built across the Ohio river about two miles north of said station, which bridge has been since used by appellant for the passage of its cars and trains over the river. The elevated approach to the northwestern end of the bridge, on the Illinois side of the river, was built by the appellant company. The foot of this approach is about three miles north of the station and about 3,000 feet north of the corporate limits of Cairo. The approach rises from the grade of the railroad and is about 20 feet above the level of the ground when it reaches the corporate limits and more that 50 feet

above the ground when it reaches the northwesterly end of the bridge. The evidence shows that the fast mail train running from Chicago to New Orleans passes over the bridge on its way southward without going to or stopping at the station in Cairo.

The fast mail train was put upon the road about July 1st, 1890. When it first began to run, it left Chicago with a mail car
196 and a baggage car. Afterwards it would leave that city with a mail car, a combination car, and a compartment car, the latter being "used for such passengers as chose to travel in it." The combination car was a baggage car and smoking car combined. Upon reaching Champaign the train would take on another coach for Jackson, Tennessee. In January, 1891, it began to take on at Duquoin still another passenger coach from St. Louis for Cairo. About the time this suit was begun, the train was in the habit of arriving at Mounds Junction, some eight or nine miles north of the Cairo station, with a mail car, a combination car, a compartment car, and two regular passenger coaches. A short train would run up from Cairo to meet the fast mail train at Mounds Junction, transferring to the latter passengers bound for the South from Cairo, and carrying to Cairo, on the return trip, passengers on the mail train desiring to go to Cairo. After the beginning of the present suit, the short train from Cairo would meet the fast mail train at Bridge Junction, three miles north of Cairo. The fast mail train in crossing the bridge and the approach thereto, on its way southward, passes through a portion of the corporate limits of the city. A part of the time the fast mail train and the short train from Cairo would exchange engines at Mounds Junction or Bridge Junction. The fast mail train is a daily train running on schedule time. There is proof that it will stop at any station between Duquoin and Cairo to put off passengers holding tickets from St. Louis. The time-tables and Travelers' Guide, as set out in the record, show that it is advertised by appellant as a passenger train, being train No. 41, and leaving Chicago at 3.15 a. m., with through coach to New Orleans and a sleeping car from Water Valley to New Orleans.

197 Under the facts thus detailed, we think the fast mail train was a "regular passenger train" within the meaning of the statute, although its main object, as originally organized, may have been the expeditious transportation of the United States mail from Chicago through to New Orleans. In C. & A. R. R. Co. *vs.* The People, 105 Ill., 657, where a train known as the "Kansas City express," being a through train from St. Louis to Kansas City, failed to stop at Carrollton, the county-seat of Greene county, it was claimed that such express train was not a "regular passenger train," but was held to be such, because it was equipped and operated in the same manner as any other passenger train upon the road and carried passengers and baggage as did other trains and ran upon the official time-table of the company as other trains did and only differed from other passenger trains in that it did not stop at all the stations. In that case we said, "The language of the act would not, perhaps, include a wild train, a freight train, an excursion train, or a special train; but where a train was engaged in carrying passen-

gers, running regularly every day upon an advertised time-card of the company, equipped as all other passenger trains, we are satisfied that such a train was designed by the legislature to fall within the terms of the act, 'all regular passenger trains.' Had the legislature intended to except a fast train or a through train from the operation of the law, it would have been an easy matter to have framed the law in such way that no doubt could have existed in regard to the intention, and, if such had been intended, language of a different character would no doubt have been used." To the same effect is the O. & M. R'y Co. *vs.* The People, 29 App. Co. Rep., 561.

One of the witnesses of the company upon the trail below,
198 who was an assistant of appellant's second vice-president, was asked the question whether the fast mail train was a regular passenger train, but, upon objection made, was not allowed to answer. The refusal of the court to permit him to answer is claimed by the appellant to have been erroneous, but we think the ruling of the trial judge was correct. The witness was asked to decide the very question which the court trying the case without a jury was called upon to decide. A witness is not permitted to give his opinion as an expert in reference to a matter which does not involve a question of science, skill, or trade. To determine whether a train is a regular passenger train is not a subject which "so far partakes of the nature of a science as to require a course of previous habit or study in order to the attainment of a knowledge of it" (Linn *vs.* Sigsbee, 67 Ill., 75; Wight Fire Proofing Co. *vs.* Poczekai, 130 Ill., 139). The opinion of witnesses should not be asked in such a way as to cover the very question to be found by the jury or court (C. & A. R. R. Co. *vs.* S. & N. W. R. R. Co., 67 Ill., 142). Where the matter requires no special knowledge and may be determined by a jury upon a sufficient description of the facts in regard to it, it is not proper to receive the testimony of experts. (Hopkins *vs.* Ind. & St. L. R. R. Co., 78 Ill., 32; City of Chicago *vs* McGiven, *id.*, 347; Pennsylvania Co. *vs.* Conlan, 101 Ill., 93.)

3. Another proposition of the appellant arising out of the assignments of error is that the fast mail train does not come within the purpose and intent and legal effect of the proviso of said section 88. If we understand the position of counsel upon this branch of the case, it is that section 88 has no application to the fast mail train,
because that train does not go to or pass the passenger sta-
199 tion at Cairo, but leaves the main line of the road three miles north of Cairo and veers off to the southeast upon the new track, recently constructed, upon the approach to the bridge. In other words, the construction which counsel place upon the proviso to section 88 is that where the passenger train of a railroad company passes the passenger station at a county-seat on its way to some destination beyond the county-seat, it must stop at the station long enough to receive the let-off passengers, but that if it is not necessary for such train to pass the station at the county-seat it is not obliged to go there or to stop there. This construction limits the proviso to a mere requirement as to the length of time during which trains must stop at railroad stations of county-seats in case

they happen to pass such stations. If such is the correct view of the proviso as applied to such a state of facts as is disclosed by the record now before us, every railroad company in the State which has been in the habit of stopping its passenger trains at such stations may turn them into some other track at a point within a short distance of the station and pass around the county-seat altogether. We think that where a railroad company has constructed its road through or in a county-seat and located a passenger station there and maintained such station there for years it is required by this proviso to continue to go there and stop there, and its obligation to perform this duty is not affected by the circumstance that such station may be the terminus of the road.

It was so held by this court in The People *ex rel. vs.* L. & N. R. R. Co., 120 Ill., 48. In that case a depot in a county-seat, which had been used as such for some thirteen years, was abandoned,
200 and a new depot was established outside of the corporate limits, to which an accom-odation train was run from the county-seat twice a day to connect with passing trains, and it was held that it was the imperative duty of the company to stop all of its regular passenger trains at the old depot, and that such duty was "expressly enjoined by the 88th section of chapter 114 of the Revised Statutes." The following language was there used: "The fact that these trains may stop at the old depot, a quarter of a mile beyond the corporate limits of the town, does not relieve the company either from its common-law or statutory duties in this respect. For this purpose the stopping of its trains miles distant from the town would be equally available unless it can be said as matter of law that the stopping of a train a quarter of a mile from a place is stopping it at the place, which, of course, it cannot be. The very statement of the proposition involves an absurdity so gross in its character as to forbid serious consideration."

Section 2 of appellant's charter empowered it to construct, maintain, and operate a railroad "from the southern terminus of the Illinois and Michigan canal to a point at the city of Cairo, &c." (Adams & Durham's Real Est. Stat. & Dec. of Ill., p. 1755). The selection of the point at the city to which the road was to be constructed was within the discretion of the company. The company fixed the corner of Second and Levee streets, or, as it is claimed by its counsel, a point 950 feet south of said corner, as the terminus of its road and built a passenger station and depot at said corner and laid its tracks to the depot and stopped all of its trains there from 1855 to 1890, a period of thirty-five years. The discretion with which it was clothed as to the location of its terminus has been exercised. As was said in The People *vs.* L. & N. R. R. Co., *supra*, in regard to McLeansboro, so may it be said here of Cairo: "During this time business interests have doubtless grown up and
201 shaped themselves with reference to the location as originally fixed by the company. Property has, no doubt, been bought and sold upon the faith of the company's action, and it may well be assumed its value is affected more or less by it."

Where a railroad company has fixed the terminal point of its

road in a town or city it cannot afterwards change the location (The People *vs.* L. & N. R. R. Co., *supra;* C. & A. R. R. Co. *vs.* Suffern, 129 Ill., 274). "The power of the company to determine its location when once exercised is exhausted. It may have a discretion as to its termini or the selection of its intermediate points or its route between certain fixed points, but, having exercised the discretion, it cannot change the location without legislative authority." (Pierce on Railroads, pp. 254, 255, quoted in People *vs.* L. & N. R. R. Co., *supra.*)

The appellant company is required by its charter to operate its road as a continuous line to the point selected and used and maintained by it as the southern terminus of its road. It cannot make Mounds Junction the southern terminus. It has no right to treat the legal and actual terminus at the corner of Second and Levee streets, in Cairo, as though its station in that city was on a side or spur track to be visited only by such cars or trains as it sees fit to send there. The requirement of the law is not met by the use of short trains for transfer purposes (Union Pacific R. R. Co. *vs.* Hall, 91 U. S., 343; State *vs.* Hartford & N. H. R. R. Co., 29 Conn., 538; U. S. *vs.* U. P. R. R. Co., 4 Dill., 478; The People *vs.* L. & N. R. R. Co., *supra;* O. & M. R. R. Co. *vs.* The People, 120 Ill., 200; C. & A. R. R. Co. *vs.* Suffern, *supra*). As the charter required the road to be built "to a point at the city of Cairo" and as the road was built up
202 to a selected and designated point in said city, to wit, the corner of the streets above mentioned, and a depot was established there at the end of the line, "the defendant had no discretion as to which of its passenger trains it will stop there and which it will not" (The People *vs.* L. & N. R. R. Co., *supra*). It may suit the interest or convenience of a railroad company that certain of its trains destined for distant points in other States and known as "through trains" should follow a new route and pass around or away from one of its long-established depots; but such mode of operating the "through trains," where the depot so established is both the railroad station of a county-seat and the legal terminus of the original road in this State, amounts not only to an evasion of the proviso to section 88, but virtually and in effect to an abandonment of a part of the company's road. It was said in The People *ex rel. vs.* L. & N. R. R. Co., *supra:* "The fact that through business may be more renumerative than way business affords no justification for neglecting the way business, nor can the company abandone its road, or any part of it, without rendering its franchises liable to forfeiture."

4. It is contended by the appellant that the enforcement of the proviso to section 88 to the extent of compelling appellant to operate its south-bound fast mail train down into Cairo would conflict with section 8 of article 1 of the Constitution of the United States, which confers upon Congress the power "to regulate commerce among the several States." That the proviso in question is not invalid, as being a regulation of interstate commerce, has been expressly decided by this court. In C. & A. R. R. Co. *vs.* The People, *supra,* it was claimed that if this statute was broad enough to in-

clude the "through train" above mentioned, known as the "Kansas City express," its effect was a regulation of commerce between
203 the States, and hence was inhibited by the Federal Constitution; but we held that the statute did not undertake to regulate commerce between the States; that it imposed no restriction upon the introduction or transportation of any article of commerce, and was but a proper exercise of the police power of the State. The following language then used is applicable here: "This railroad company accepted its charter upon the implied condition that its franchises would be exercised subject to the power of the State to impose such reasonable regulations as the comfort, welfare, or safety of society might require. Did the act contribute to the comfort, safety, or welfare of the public? If it did, and did not deprive the company of any essential right conferred by its charter, its passage was not a proper exercise of the police power (Cooley on Const. Lim., 577; Potter's Dwarris on Stat. and Const., 458; Lake View *vs.* Rose Hill Cemetery, 70 Ill., 191). In the enactment of the law requiring all regular passenger trains to stop at county-seats the legislature, no doubt, had in view the great benefit the public would derive in the increased facilities for reaching the county-seat, to aid in the dispatch of business in courts, in the prompt arrest and prosecution of criminals who might be indicted in the courts, in the attendance of witnesses, grand and petit jurors; indeed, the prompt and efficient transaction of all business in the courts held at the county-seat and the facility for the examination of records on the State and conveyance of property. These and various other matters pertaining to the welfare of the public doubtless led to the enactment of the law, &c." The views thus expressed are sustained by the following cases: Stone *vs.* Farmers' Loan & Trust Co., 116 U. S., 307; Stone *vs.* I. C. R. R. Co., *id.*, 347; Smith *vs.* Ala-
204 bama, 104 U. S., 465; Louisville N. O. R'y Co. *vs.* Mississippi, 133 U. S., 587; Davidson *vs.* The State, 4 Tex. Ct. of App., 545.

Counsel for appellant concede that section 88 is not a regulation of interstate commerce if it be construed as merely requiring trains which pass through county-seats to stop long enough at the stations to receive and let off passengers with safety; but it is claimed that the section is a violation of the Federal Constitution and an interference with the Federal Government if it be so enforced as to require a fast train, carrying the United States mail and on its way to New Orleans through several States south of the Ohio river, to go to the regular passenger station at Cairo and stop there long enough to receive and let off passengers with safety instead of proceeding over the Ohio River bridge without going to said station.

It is true that certain clauses of the act of Congress of September 20th, 1850, donating sections of the public lands to the State of Illinois to aid in the construction of the railroad which appellant afterwards built, and also a clause in the charter granted to appellant by the State of Illinois in February, 1851, provide for the transportation of the Government mail and of any property or troops of the United States (2 Starr & Cur., page 1980, chap. 114, sec. 4 and 6; Adams & Durham's Real Est. Stat. & Dec., p-ge 1759, sec. 19); but

we apprehend that such arrangement as the appellant company may have with the Post Office Department of the Federal Government for the transportation of the mail cannot have the effect of abrogating a reasonable police regulation of this State. Sections 1 and 2 of the above-named act of Congress grant land and right of
205 way to the State of Illinois for the construction of a railroad "to a point at or near the junction of the Ohio and Mississippi rivers," and provide that "the construction of said road shall be commenced at its southern terminus at or near the junction of" said rivers. Congress left it to the State or to a company to be chartered by the State to select the particular point, at or near such junction, which was to be the southern terminus. A subsequent contract with the Post Office Department would not authorize the appellant to abandone the use of any part of the road thus constructed to a point selected in pursuance of a discretion conferred by the Federal Congress. It was held by the Supreme Court of the United States in Stone *vs.* Farmers' Loan & Trust Company, *supra*, that in case of a railroad whose construction had been aided by Congress so as to establish a route of travel through several States a State has the power to make all needful regulations of a police character for the government of the company operating the road within the jurisdiction of the State, and that among such regulations are those which require the company to stop trains at railroad crossings, to slacken speed through a crowded thoroughfare, and to do other things "affecting the comfort, the convenience, or the safety of those * * * entitled to look to the State for protection," &c. In Smith *vs.* Alabama, *supra*, the same court said that the rate of speed at stations and through villages, town-, and cities "was a matter of State regulation." If the requirement that the mail train go to Cairo and stop long enough to receive and let off passengers with safety interferes in any way with the carriage of the mail, it must be by reason of the delay supposed to be thereby created, but the amount and extent of the delay is not unreasonable. Requiring trains to stop at crossings and to slacken their speed through cities and villages creates delay. It does not appear that stopping at the Cairo
206 station will create any unreasonable delay. On the contrary, the proof shows that a vestibule passenger train running from Chicago to New Orleans which stops at the Cairo station performs the journey from Chicago to New Orleans within the same time as such journey is made by the "fast mail train."

It is true that section 7 of said act of Congress grants the same rights, &c., which are granted to Illinois, to the States of Alabama and Mississippi, in order to aid in the continuation of a railroad from the mouth of the Ohio river to Mobile, but the fact that Congress had aided several States by the donation of public lands for the construction of railroads which may eventually form one continuous line does not relieve the companies operating such roads from the control of the States granting them their respective charters. In Stone *vs.* Farmers' Loan and Trust Co., *supra*, it was said that a railroad company was not relieved entirely from the State regulation or State control in one State simply because it had been

incorporated by and was carrying on business in the other States through which its road ran; that the corporation created by such State was, for all the purposes of local government, a domestic corporation and subject to the constitutional authority of the State government; that the company while in the State could be governed by the State in respect to all things which had not been placed by the Federal Constitution within the exclusive jurisdiction of Congress; that nothing could be done by the government of the State which would operate as a burden on the interstate business of the company or impair the usefulness of its facilities for interstate traffic, but that it was not enough to prevent the State from acting; that the road therein was used in aid of interstate
207 commerce; that "legislation of this kind to be unconstitutional must be such as will necessarily amount to or operate as a regulation of business without the State as well as within." In Smith *vs.* Alabama, *supra*, the Federal Supreme Court again said: "It is to be remembered that railroads are not natural highways of trade and commerce. They are artificial creations. They are constructed within the territorial limits of a State and by the authority of its laws and ordinarily by means of corporations exercising their franchises by limited grants from the State. The places where they may be located and the plans according to which they must be constructed are prescribed by the legislation of the State."

Counsel refer to the act of the legislature of this State enabling railroad companies to enter into operative contracts, approved February 12, 1855, and to the "Act to facilitate travel and transportation," approved February 25, 1867, as in some way committing the State to a waive of its control over railroad companies chartered by it which have connections with railroads operating in other States. We cannot see how these acts can be construed as authorizing the results which are claimed to flow from them. The act of 1855 merely empowers railroad companies in other States for leasing or running their roads, and for other purposes. The privilege of connecting with a foreign road does not impair the obligation to submit to the control of the State which has granted the charter, nor does it involve the right to change the established line or terminus of the original road. The act of 1867 provides for the connection of railroads with the rails of a railroad bridge in cases where such railroads "terminate at any point on any line of continuous railroad thoroughfare" and where the bridge is so constructed
208 as to be a part of such thoroughfare. The act expressly provides that "by such connections no corporate rights shall be impaired." (For acts of 1855 and 1867 see 2 Starr & Cur. Stat., p-ges 1921, 1922.) As we understand the act of 1867, it contemplates a case where the railroad as extended to the bridge from its terminus and the rails on the bridge shall together constitute one thoroughfare. In the present case, however, the appellant has not extended its road to the bridge from the terminus at the corner of Second and Levee streets, in Cairo, but from a point three miles north of the terminus. Hence the necessity for avoiding the terminus in reaching the bridge, if such necessity exists, has been created by

appellant's own act in so constructing the approach to the bridge as not to make the legal terminus of the road a part of the continuous thoroughfare over the bridge.

5. It is urged by counsel for appellant that the writ of mandamus should have been refused by the trial court upon the alleged ground that the exercise of a sound judicial discretion would naturally lead to such refusal. If a clear legal right to the writ is shown by the party applying for it, he is entitled to its issuance (C. & A. R. R. Co. *vs.* Suffern, *supra*). We think such showing is made in this case.

It is said that the judgment is too broad in ordering appellant to stop all of its regular passenger trains at the Cairo station when it appears from the pleadings and proofs that the fast mail train is the only regular passenger train which does not stop there. As it was the duty of appellant to stop all of its regular passenger trains at said station, a violation of its duty was shown when the failure to stop one of such trains was proven. It was not necessary to
209 show that the neglect to comply with the statute extended to all regular passenger trains. The respondent demurred to the petition upon the ground, among other grounds, that the prayer of the petition was broader than the petition itself. Its demurrer was overruled, and it answered the allegations of the petition. There was thereby a waiver of the cause of demurrer. "The alternative writ stands in the place of a declaration to which the return is an answer" (Silver *vs.* Whitmore, 45 Ill., 224). The respondent, having elected to try the case upon its merits, cannot now urge such an objection as this to the petition.

The judgment of the circuit court is affirmed.

Affirmed.

BAILEY, C. J.: I do not concur in this decision.

And be it further remembered that on, to wit, *on* the second day of November, in the year of our Lord one thousand eight hundred and ninety-two, an order was made by said court in words and figures following, to wit:

THE ILLINOIS CENTRAL RAILROAD COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* WILLIAM N. BUTLER.
} Appeal from Alexander.

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matter and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment
210 aforesaid is there anything erroneous, vicious, or defective, and that the record is no error, therefore it is considered by the court that the motions heretofore made to reverse the judgment

and remand said cause for a new trial be, and the same are, denied, and the motion heretofore made to affirm the judgment herein is allowed; and it is therefore ordered by the court the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the same matter and things herein assigned for error, and that motion for *procedendo* be allowed; and it is further considered by the court that the said appellees recover of and from the said appellant costs by them in this behalf expended, and that they have execution therefor.

211 And be it remembered that on, to wit, the third day of December, in the year of our Lord one thousand eight hundred and ninety-two, there was filed in my said office a stay order, which is in words and figures following, to wit:

Supreme Court of Illinois, Central Grand Division, January Term, 1893.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
THE PEOPLE, &c.

It appearing from the petition for rehearing filed by the appellant herein that there are probable grounds for granting a rehearing in this cause, it is hereby ordered that all further proceedings authorized by the judgment of this court in said cause be, and the same are hereby, stayed until the next term of this court, to be held at Springfield, in January, 1893.

Done and ordered at chambers, in the city of Chicago, this first (1st) day of December, A. D. 1892.

BENJAMIN D. MAGRUDER,
Judge of the Supreme Court of Illinois.

212 And be it further remembered that on, to wit, the sixteenth day of January, in the year of our Lord one thousand eight hundred and ninety-three, an order was made by said supreme court in words and figures following, to wit:

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } Appeal from Alexander.

On this day come again the parties herein, and the court being now sufficiently advised in the premises it is ordered by the court that the petition for a rehearing herein be, and the same is, denied.

213 And be it remembered that on, to wit, the twenty-first day of January, in the year of our Lord one thousand eight hundred and ninety-three, was filed in my said office a certificate, which is in words and figures as follows, to wit:

In the Supreme Court of the State of Illinois, Central Grand Division.

To the hon. the Chief Justice and associate justices of the Supreme Court of the United States of America, Greeting:

Whereas in the supreme court of the State of Illinois, which was and is the highest court of said State in which the cause hereinafter mentioned could be heard, at a term of the central grand division of said court, held at Springfield, in the State of Illinois, to wit, the January term of said court, on the 17th day of January, A. D. 1893, in the cause wherein Illinois Central Railroad Company was appellant and The People of the State of Illinois on the relation of W. N. Butler, State's attorney, was the appellee, then pending in the said supreme court on an appeal from a final judgment of the circuit court of the county of Alexander, in the State of Illinois, in favor of The People of the State of Illinois on the relation aforesaid for a peremptory writ of mandamus to be issued against said Illinois Central Railroad Company pursuant to an alleged statute of and an authority exercised under the said State of Illinois, it was maintained on the part of the said Illinois Central Railroad Company that the proviso in section 88 of chapter 114 of the Revised Statutes of the State of Illinois, in pursuance of which the aforesaid judgment of the supreme court of the State of Illinois was ren-
213½ dered, unlawfully detains the United States mail and delays and interferes with and imposed an unequal burden upon interstate commerce, and is in violation of the Constitution and statutes of the United States, and is an unwarranted regulation of a common carrier of passengers between two or more States; and whereas, on the day hereinbefore mention-, a petition for rehearing in said cause was denied and a final judgment of said supreme court of the State of Illinois was entered in said cause affirming the said judgment of the circuit court of Alexander county aforesaid, I do hereby certify that there was drawn in question in the said cause the validity of a statute and an authority exercised under said State of Illinois on the ground of their being repugnant to the Constitution of the United States, and that the decision thereon was in favor of their validity. It is therefore ordered that a writ of error be allowed in this case, and *and* that a citation be issued accordingly.

(Signed) JOSEPH W. BAILEY,
Chief Justice of Supreme Court of Illinois.

And be it remembered that on, to wit, the twenty-first of January, in the year of our Lord one thousand eight hundred and ninety-two, there was filed in my said office a bond, which is in words and figures following, to wit:

Know all men that Illinois Central Railroad Company, as principal, and —— ——, as surety, of the county of —— and State of Illinois, are held and firmly bound unto the People of the State of Illinois on the relation of W. N. Butler in the penal sum of one

thousand dollars, lawful money of the United States; for the payment of which sum, well and truly to be made, — do bind themselves, their heirs and personal representatives and successors, jointly and severally, by these presents.

In witness whereof the said company has caused these presents to be signed and sealed by its proper officers and the said —— —— has hereunto set his hand and seal this 22nd day of January, 1893.

The condition of the foregoing obligation is such that whereas on the 17th day of January, 1893, the supreme court of the State of Illinois overruled a petition for rehearing and rendered final judgment in a certain cause pending in the said supreme court on an appeal from the judgment of the circuit court of Alexander county, in the State of Illinois, ordering the issuance of a peremptory writ of mandamus, wherein said Illinois Central Railroad Company was appellant and The People of the State of Illinois on the relation aforesaid was appellee, affirming said judgment rendered in said cause in said circuit court against said railroad company in favor of the People of the State of Illinois on the relation aforesaid;

And whereas said Illinois Central Railroad Company has sued out of the Supreme Court of the United States a writ of error issued by the supreme court last aforesaid, the supreme court of the State of Illinois, wherein said Illinois Central Railroad Company is named as plaintiff and the said People on the relation aforesaid is named as defendant, for the review of the judgment in the above-mentioned cause:

Now, therefore, if the said Illinois Central Railroad Company shall duly prosecute its said writ of error with effect and, moreover, pay the amount of the damages that may be rendered against it in case the said judgment shall be affirmed in said Supreme Court of the United States, then the above obligation to be void;
214 otherwise to remain in full force and virtue.

ILLINOIS CENTRAL RAILROAD COMPANY. [SEAL.]
STUYVESANT FISH, *President.* [SEAL.]
JAMES FENTRESS (*Surety*).

Witnesses:
WILLIAM H. GREEN.
A. M. WARD.

Approved:
JOSEPH M. BAILEY,
Chief Justice of Supreme Court of Illinois.

STATE OF ILLINOIS, } ss:
Cook County, }

James Fentress, of said county and State, being duly sworn, on oath says that he is the owner in fee of real estate situate in said county; that the same is free from all incumbrance whatever, and the market value thereof is more than ten thousand dollars.

(Signed) JAMES FENTRESS. [SEAL.]

Sworn and subscribed before me this 20th day of January, A. D. 1893.

(Signed) EDWIN P. SNENE,
Notary Public, Cook Co., Ill.

And be it further remembered that on, to wit, the twenty-first day of January, in the year of our Lord one thousand eight hundred and ninety-three, there was lodged in my said office of the said Illinois Central Railroad Company for the said People of the State of Illinois a copy of the writ of error hereto attached, which is in words and figures as follows, to wit:

215 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

The President of the United States of America to the chief justice and associate justices of the supreme court of the State of Illinois, central grand division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment which is in said supreme court of said State, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between the Illinois Central Railroad Company and the People of the State of Illinois on the relation of W. N. Butler, wherein was drawn in question the validity of a statute of and an authority exercised under the said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened, to the great damage of the said Illinois Central Railroad Company, as by its complaint appears, we, being willing that the error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the twentieth day of February, A. D. 1893, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, the twenty-first day
216–218 of January, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred*th* and seventeenth year.

(Signed) JAMES T. JONES,
Clerk of the United States Circuit Court,
Southern District of Illinois.

219 And be it remembered that on, to wit, the fourth day of February, in the year of our Lord one thousand eight hundred and ninety-three, a citation and acceptance of service thereof was filed in my said office, which is in words and figures following, to wit:

UNITED STATES OF AMERICA, }
Southern District of Illinois. }

To the People of the State of Illinois on the relation of W. N. Butler, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the third Monday of February, A. D. 1893, pursuant to a writ of er-or issued by the Supreme Court of the United States and directed to the supreme court of the State of Illinois, for the review of the final judgment rendered January 17th, A. D. 1893, in the cause therein pending, wherein Illinois Central Railroad Company was appellant and The People of the State of Illinois on the relation aforesaid was appellee, which writ of error has been filed in the clerk's office of the supreme court of the State of Illinois;

And in which writ Illinois Central Railroad Company is named as plaintiff and The People of the State of Illinois on the relation aforesaid is named as defendant, to show sause, if any there be, why the judgment mentioned should not be correct*ected* and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph M. Bailey, chief justice, this 28th day of January, A. D. 1893.

JOSEPH M. BAILEY,
Chief Justice of Supreme Court Ill.

We have this second day of February, 1893, received a
220 copy of the foregoing citation.

LANSDEN & LEEK,
Att'ys for the People of the State of Illinois.

And be it remembered that on, to wit, the 7th day of February, in the year of our Lord one thousand eight hundred and ninety-three, a copy of the original citation, with acceptance of service thereof, was filed in my said office, which is in words and figures following, to wit:

UNITED STATES OF AMERICA, }
Southern District of Illinois. }

To the People of the State of Illinois on the relation of W. N. Butler, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the third Monday of February, A. D. 1893, pursuant to a writ of error issued by the Supreme Court of the United States and directed

to the supreme court of the State of Illinois, for the review of the final judgment rendered January 17th, A. D. 1893, in the cause herein pending, wherein Illinois Central Railroad Company was appellant and The People of the State *od* Illinois on the relation aforesaid was appellee, which writ of error has been filed in the clerk's office of the supreme court of the State of Illinois;

And in which writ Illinois Central Railroad Company is named as plaintiff and The People of the State of Illinois on the re-
221 lation aforesaid is named as defendant, to show cause, if any there be, why the judgment mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph M. Bailey, chief justice, this 28th day of January, A. D. 1893.

JOSEPH M. BAILEY,
Chief Justice of the Supreme Court of Illinois.

I have this third day of February, A. D. 1893, received a copy of the citation of which this is a copy.

WM. N. BUTLER, *Relator.*

222 I, E. A. Snively, clerk of the supreme court in and for the central grand divisicn, State of Illinois, do hereby certify that the foregoing is a complete, true, and correct copy of the convening order of court for the June term, A. D. 1892, the original record of the circuit court of Alexander county in a certain suit wherein The Illinois Central Railroad Company was appellant and The People of the State of Illinois were appellees, the orders, opinion, and final judgment of said supreme court, certificate of the chief justice of the supreme court, copy of the writ of error and bond, copy of citations and acceptance of service thereon, as the same appears of record *and* the files in my office.

Seal of the Supreme Court, State of Illinois, Aug. 28, 1818.

In testimony whereof I hereunto set my hand and affixed the seal of said supreme court, at Springfield, this 15th day of February, A. D. 1893.

E. A. SNIVELY,
Clerk Supreme Court.

223 UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

The President of the United States of America to the chief justice and associate justices of the supreme court of the State of Illinois, central grand division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment which is in said supreme court of said State, before you or some of you, being the highest court of law or equity of said State in which a decision could be had in the said suit between the Illinois Central Railroad Company and the People of the State of Illinois on the relation of W. N. Butler, wherein was drawn in ques-

tion the validity of a statute of and an authority exercised under the said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity, a manifest error hath happened, to the great damage of the said Illinois Central Railroad Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the twentieth day of February next, A. D. 1893, in the said Supreme Court to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done
224 therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, the twenty-first day of January, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth year.

{ The Seal of the Circuit Court of the United States for the South'n Dist. Ill. }

JAMES T. JONES,
Clerk of the U. S. Circuit Court, Southern District of Illinois.

In obedience to this writ of error I herewith transmit a true and correct copy of the conveying order of the June term, A. D. 1892, of the supreme court, State of Illinois, a true and correct copy of the original record from the circuit court of Alexander county in a certain suit wherein The Illinois Central Railroad Company was appellant and The People of the State of Illinois were appellees, a true and correct copy of all the orders, opinion, and final judgment of said supreme court, a true and correct copy of the bond filed in said cause, a true and correct copy of the citations herein, and that I have retained in my office a copy of this writ of error.

Seal of the Supreme Court, State of Illinois, Aug. 28, 1818.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court this 15th day of February, A. D. 1893.

E. A. SNIVELY,
Clerk Supreme Court.

[Endorsed:] Filed Jan. 21, 1893. E. A. Snively, cl'k.

225 In the Supreme Court of the United States, to the October Term, 1893.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff in Error, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of W. N. Butler, Defendant in Error.	Error to the Supreme Court of the State of Illinois.

Errors Assigned.

First. The supreme court of the State of Illinois erred in sustaining a demurrer to the first, fifth, sixth, and seventh paragraphs of the amended answer; which paragraphs set up the facts showing that the statute of the State of Illinois in pursuance of which said writ of mandamus was ordered was a burthen upon interstate commerce.

Second. The supreme court of the State of Illinois erred in deciding that the proviso in section 88 of chapter 114 of the Revised Statutes of the State of Illinois does not delay and detain unlawfully the United States mail, and that it does not interfere
226 with and impose unequal burthens upon interstate commerce, and that it is not in violation of the Constitution of the United States, and that it is not an unwarranted regulation of a common carrier of passengers between two or more States.

And the said Illinois Central Railroad Company, by its attorneys, now comes and says there is manifest error in this record, to wit, as above assigned.

JAMES FENTRESS,
General Solicitor, and
WILLIAM H. GREEN,
Attorney for said Plaintiff in Error.

Endorsed on cover: Case No. 15,265. Illinois supreme court. Term No., 217. The Illinois Central Railroad Company, plaintiff in error, *vs.* The People of the State of Illinois *ex rel.* W. N. Butler. Filed February 21st, 1893.

FILED.
MAR 14 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

Of the October Term, 1895.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff in Error.
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. W. N. BUTLER, Defendant in Error.

ERROR to the SUPREME COURT of the STATE OF ILLINOIS.

217

Brief and Argument

FOR PLAINTIFF IN ERROR.

JAMES FENTRESS,
General Solicitor of
I. C. R. R. Co.,
Of Counsel.

WILLIAM H. GREEN,
Attorney for
Plaintiff in Error.

Supreme Court of the United States,
Of the October Term, 1895.

ILLINOIS CENTRAL RAILROAD COMPANY, Plaintiff in Error. vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. W. N. BUTLER, Defendant in Error.	ERROR to the SUPREME COURT of the STATE OF ILLINOIS.

BRIEF AND ARGUMENT

FOR PLAINTIFF IN ERROR.

STATEMENT.

This was a proceeding in the Circuit Court of Alexander County, Illinois, by Petition for a Writ of Mandamus, begun in the name of The People of the State of Illinois on the relation of W. N. Butler, against Illinois Central Railroad Company, to enforce an alleged duty arising out of the proviso to Section 88 of Chapter 114 of the Revised Statutes of Illinois. There was a trial and a judgment in favor of the Petitioners in the Circuit Court, and an appeal from that judgment to the Supreme Court of the State of Illinois, where the judgment of the Circuit Court was affirmed; and a writ of error was sued out from this Court to the Supreme Court of the State of Illinois, and the record is brought here and the errors assigned thereon.

The said Section 88 of Chapter 114 of the Revised Statutes of Illinois is as follows:

"88. Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station, advertised by such corporation as a place for receiving and discharging passengers, upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: *Provided*, all regular passenger trains shall stop a sufficient length of time at the railroad station of county seats, to receive and let off passengers with safety."

Two errors are assigned, each of which embodies the proposition that the Statute above referred to, *as interpreted by the Court*, and the judgment enforcing the supposed obligation of that Statute, create a burthen on inter-state Commerce and on the carrying of the United States mail. Each of these errors will be considered separately.

ILLINOIS CENTRAL RAILROAD COMPANY, the Plaintiff in Error, is a Corporation, existing under a Charter granted by the State of Illinois and made a public law, and under various laws of Illinois, extending its powers beyond the scope of its Charter. Its railroad, which was constructed under the franchise granted in its Charter, was commenced when there was no platted town or city of Cairo, at a point below where the old depot referred to in the record is situated, at the corner of Second Street in the city of Cairo; and from that point it was built to the Southern terminus of the Illinois and Michigan Canal with two branches, one to Dunleith on the Mississippi River and the other to Chicago. The City of Cairo is situated

near the mouth of the Ohio River and is surrounded by high levees, built for the purpose of protecting it from the river floods.

When this proceeding was begun, Plaintiff in Error held and still holds a long lease from the Chicago, St. Louis and New Orleans Railroad Company for a railroad running from New Orleans to Cairo, and was then and still is practically the owner of said railroad. In order to facilitate the carrying of the growing travel and traffic between the States South of the Ohio River and the States North of that River, the Chicago, St. Louis and New Orleans Railroad Company had built an immense steel bridge across the Ohio River, and laid a track thereon, extending to its westerly end. This bridge crosses the Ohio River from Kentucky to Illinois. Its westerly terminus on the Illinois Shore is at a point where it meets the main line of Illinois Central Railroad and at which point that railroad curves sharply in a southeasterly direction and runs two miles to the depot aforesaid.

In pursuance of the Act of Congress concerning the height of bridges across navigable streams, this bridge was so built as to be 55 feet above the track of Illinois Central Railroad which track is on a high levee at the point where the bridge and the railroad come together on the bank of the Ohio River, and 67 feet above the natural ground at that point. But in order that Plaintiff in Error might use the bridge in connection with its railroad it was necessary to begin an approach to the bridge more than 3000 feet north of the corporate limits of the City of Cairo, and the said approach

was and is seven thousand, nine hundred and fifty-five (7955) feet in length, and the northerly end of the approach is more than three and one-half (3 1-2) miles distant from the depot on the corner of Second and Levee Streets And this approach rises on a grade of about thirty-five (35) feet to the mile, until at the point, where the approach is over the northern limits of Cairo, it is twenty (20) feet above the ground, and continues to rise until it reaches the Bridge, at a height of fifty-five (55) feet above the railroad track on the levee.

(A stipulation showing the heights and distances as above stated is found on page 102 of the printed record.)

In order to carry into full execution the spirit of its Charter and of the Act of Congress calling it into existence, and of the various Acts of the Legislature of Illinois concerning the leasing of other railroads and making connections with railroads in other States, the Plaintiff in Error built an inclined plane from its main track to the westerly end of the bridge, and laid a track thereon, so as to connect its main track with the westerly end of the main track of the Chicago, St. Louis and New Orleans Railroad, which track had been laid down on said Bridge by said Chicago, St. Louis and New Orleans Railroad Company. The inclined plane, commonly called a "bridge approach" as above stated, began at a point seven thousand, nine hundred and fifty-five (7955) feet north of the westerly end of the said Bridge and which point of the commencement of said approach is three thousand, three hundred and twenty-four (3324) feet North of the corporate limits of the City of Cairo and is more than *three miles and a half* from the old depot

in Cairo on the corner of Second Street. And the Plaintiff in Error, having in view the same purpose of carrying into full effect the spirit of its Charter and of the laws above mentioned, organized a fast train to run between Chicago, in the State of Illinois, and New Orleans, in the State of Louisiana, the southern terminus of its leased line of railroad, which has its northern terminus at the northern end of said bridge, and with which leased line the Plaintiff in Error had connected the main track of its railroad in Illinois over said bridge approach at the northern end of said bridge. This Fast Mail train carried passengers and baggage between the States North of the Ohio River and the States South of the Ohio River, and ran on a schedule prepared by the Post Master General, which schedule did not provide for a deflection of the train from the straight track a distance of more than three miles and a half to the old depot on Second Street in Cairo.

There was no claim in the Petition that Plaintiff in Error did not furnish abundant facilities for the City of Cairo and for all of its inhabitants. And at the time of the commencement of the proceedings in this case and at the time of the trial, there were three regular passenger trains over the railroad of Plaintiff in Error which daily ran into Cairo from the North and the same number from the South, which was a very abundant supply of railroad facilities to Cairo and its inhabitants. The Petition is based solely on the bald proposition that the Statute of Illinois compelled the Plaintiff in Error to run all its regular passenger trains down to the old depot at the corner of Second Street. Plaintiff in Error, as Defendant below, demurred to the Petition and assigned as one of

the causes of demurrer that the averment of a common law right under the Case stated in the Petition was legally untrue and should be stricken out, and thereupon the Petition was so amended as to strike out the averment of a common law right. And the only claim of right to a peremptory Writ of Mandamus was based on a Statute of Illinois;—namely—the proviso to Section 88 of Chapter 114 of the Revised Statues of the State of Illinois. And the demurrer was sustained to paragraph One of the Answer to the Petition expressly on the ground that the only claim to the peremptory Writ made by the Petitioners was based on the Statute.

The question whether the Statute, *as construed by the Court*, was a regulation of and a burthen upon inter-state Commerce and a detention of the United States mails was brought before the Circuit Court and before the Supreme Court of Illinois in unmistakable terms.

The Supreme Court of Illinois held that the demurrer to paragraphs 1, 5, 6, and 7 of the Answer to the Petition was properly sustained.

Paragraph One shows that Defendant was in a most full and ample manner performing its duty under its Charter to the State of Illinois and to the inhabitants of Cairo. Paragraphs 5, 6 and 7 contain a statement of the facts which show that the compelling of a train to go down into Cairo to the old depot at Second Street and return to Bridge Junction, a distance of more than seven miles, is a burthen on inter-state Commerce, and would impair the usefulness of the facilities for inter-state traffic organized and constructed by Plaintiff in Error. The facts stated in these paragraphs also

show that the train in controversy was run on a schedule prepared by the Post Master General and that an enforcement of the prayer of the Petition would be an interference with and delay of the United States Mail.

The paragraphs 1, 5, 6 and 7 of the Answer, which were stricken out by the sustaining of the demurrer, will be found on pages 18 to 26 inclusive of the printed record.

FIRST ERROR ASSIGNED.

First. The Supreme Court of the State of Illinois erred in sustaining a demurrer to the first, fifth, sixth and seventh paragraphs of the amended answer; which paragraphs set up the facts showing that the statute of the State of Illinois in pursuance of which said writ of mandamus was ordered was a burthen upon inter-state commerce.

We well understand that ordinarily the decision of a State Court upon a mere question of pleading will not be reviewed in this Court. But here, in the sustaining of the demurrer to the 1st. 5th, 6th, and 7th paragraphs of the Answer, the State Court denied to the Plaintiff the right to present, as a legitimate part of its defense, the facts showing wherein the enforcement of the prayer of the Petition by a peremptory Writ of Mandamus would cause the unlawful delay af the United States Mail and would interfere with inter-state Commerce. The far reaching effect of the sustaining of the demurrer was made manifest when the Defendant below sought to introduce evidence which would have es-

tablished the averments of the paragraphs 5, 6 and 7. On pages 95, 96 and 97 of the printed record it will be seen that Defendant below was prohibited from proving an important part of its defense. We call special attention to the following interrogatory, which Defendant was prevented by the Court from asking, and also to the Court's reason for this ruling:

"Was that United States Mail which it carried, transported by Illinois Central Railroad Company under special contract with the Government?"

To this question objection was made and the objection was sustained by the Court; and the Defendant below excepted to the sustaining of the objection.

Then numerous other questions were asked for the purpose of showing that the train in controversy was carrying the United States Mail under a special contract and that by the contract the Post Master General prepared the schedule and that as long as the contract should last, the Plaintiff in Error could not change it; and objection was sustained to all such questions, and exceptions taken.

Then the Court said: "The record may show that the objection is sustained to the testimony for the reason that it is not competent for the Defendant to enter into a contract with the Government of the United States, whereby it renders itself incapable of complying with laws of Illinois. Let the record also show an exception to the ruling of the Court."

It needs no argument to sustain our statement

that the Court thus erroneously declared the law. If the "laws of Illinois" were repugnant to the Constitution of the United States, or in conflict with any Constitutional Act of Congress or an interference with any of the proper functions of any department of the Federal Government, or if their enforcement created a burthen upon the Commerce between the States,—then, in such case, the Plaintiff in Error had a right in law to make a contract with the Government of the United States which could render it incapable of complying with such laws, and had a right to operate its train regardless of such laws.

The erroneous declaration of the law by the State Circuit Court correctly represents the spirit in which the case was tried. It seems manifest that the case was not properly tried. Plaintiff in Error was not allowed to state its case in its Answer or to prove it. And the Supreme Court of Illinois affirmed the Judgment of the State Circuit Court.

THE SECOND ERROR ASSIGNED.

"Second, The Supreme Court of the State of Illinois erred in deciding that the proviso in section 88 of chapter 114 of the Revised Statutes of the State of Illinois does not delay and detain unlawfully the United States Mail, and that it does not interfere with and impose unequal burthens upon inter-state Commerce, and that it is not in violation of the Constitution of the United States, and that it is not an unwarranted regulation of a common carrier of passengers between two or more States."

We are here brought squarely to the consideration of the question whether compelling Plaintiff in Error, as a Common Carrier of passengers between the States and as a contractor with the Government of the United States to carry its mails, to go more than three miles and a half out of the straight line of travel and thus to travel seven miles further than necessary, is a burthen upon inter-state Commerce and an unlawful delay of the United States Mail. There is no chance for quibbling here. The facts are not disputed. The old depot where Plaintiff in Error had been stopping its trains for 30 years, was and is a little over three miles and a half from the point at which Plaintiff in Error began lawfully to build its connection with the track on the Bridge across the Ohio River, as provided in the Acts of the Legislature of Illinois of 1867 and 1855, hereafter to be quoted. Plaintiff in Error was carrying the United States Mail, and as a Common Carrier was carrying passengers between the States. It was daily running six passenger trains over its line of railroad to the old depot in Cairo, a town having between ten and eleven thousand population. It was discharging its Common law duty to the town of Cairo in the fullest sense of those terms. But Plaintiff in Error was something more than the owner of that portion of Illinois Central Railroad that runs into Cairo. It was lawfully the owner or lessee of over two thousand miles of other railroad lines. It was Lessee of a line of railroad 550 miles in length, extending from the north end of the Bridge across the Ohio River into the City of New Orleans, with which leased line of railroad as before stated, Plaintiff in Error had connected Illinois Central Railroad in the manner provided by law. Plaint-

iff in Error had become Contractor with the Government to carry the United States mails over this straight connection with the Bridge under a schedule prepared by the Postmaster General, and had undertaken, as a Common Carrier, to carry passengers by the shortest route between the States over this straight line without going down into Cairo to the old depot at Second street.

The peremptory Writ of Mandamus sought for in this case, if issued, will be against the Plaintiff in Error as a Corporation, exercising all the rights and powers granted to it by its Charter, and *also* exercising those rights and powers granted to it by Acts of Congress and by various Acts of the Illinois Legislature. The State Courts have dealt with the Plaintiff in Error as if its powers and rights and duties were only such as existed in connection with a railroad which it built from Cairo northward to the southern terminus of the Illinois and Michigan Canal, with one branch to Chicago and another to a point opposite Dubuque. But after the building of the railroad provided for in its Charter, the Plaintiff in Error received additional powers from the Illinois Legislature, which additional powers are far more extensive than those granted in its Charter (if we except the Creative Act) and gave entirely new rights and imposed entirely new duties, some of which rights and duties seem to have been contemplated and anticipated by the 4th and 6th Sections of the Act of Congress of September 20th, 1850, which gave a national character to the railroad to be built by the Plaintiff in Error under the land grant embodied in that Act.

The Act of the Illinois Legislature of February

12th, 1855, gave to Plaintiff in Error the unlimited power to lease railroads in other States, and to connect with railroads in other States on any terms that might be agreed upon by the Companies.

See *Starr & Curtis, Illinois Statute, Vol. 2, page 1921.*

But the Legislature of Illinois seems to have thought additional powers were necessary to complete the usefulness of railroads forming parts of the interstate system of communication and travel, and in 1867 passed an Act that ought to be spread in full before your Honors. It is found in the Session Acts of the Illinois Legislature of 1867, page 174. It is as follows:

An Act to facilitate travel and transportation

"*Be it enacted by the People of the State of Illinois represented in the General Assembly:* Railroads terminating, or to terminate at any point on any line of continuous railroad thoroughfare where there now is or shall be a railroad bridge for crossing of passengers and freight in cars over the same as part of such thoroughfare, shall make convenient connections of such railroads by rail, with the rail of such bridge; and such bridge shall permit and cause such connections of the rail of the same with the rail of such railroads, so that by reason of such railroads and bridge there shall be an uninterrupted communication over such railroads and bridge as public thoroughfares. But by such connections no corporate rights shall be impaired."

See also Illinois R. S. 1870, page 807.

Starr & Curtis Illinois Statutes, page 1921.

The Supreme Court of Illinois, in its Opinion in the case, does not rise to a realization of the case which is before it It confines itself to a consideration of the rights, powers and duties of Plaintiff in Error under its original Charter in connection with a railroad 700 miles long, which it built in the State of Illinois ; utterly ignoring the rights, powers and duties of Plaintiff in Error arising from the legislation of Illinois subsequent to the enactment of its Charter, under which subsequent legislation Plaintiff in Error owns and operates over 2,000 miles of railroad, including a through line from Sioux City to New Orleans, running through six States and over the aforesaid steel bridge. To deal with Plaintiff in Error on the basis of a knowledge only of its powers under its original Charter is as inconsiderate as to deal with the Monarch of the Forest on the basis of a knowledge only of the powers of the month old Cub Lion. And yet that is exactly what was done by the Supreme Court of Illinois in adjudicating this case.

Prior to the year 1887 the Federal Government did not exercise its Constitutional power to regulate Commerce between the States, except in connection with "navigation." But the Act of Congress of February 4th, 1887, was a plenary exercise of power over interstate Commerce and brought Plaintiff in Error within its control. Thereby the duties of Plaintiff in Error to the State of Illinois and to the inhabitants thereof were

not diminished. The only one of these duties to be considered in this case grows out of the implied obligation of Plaintiff in Error under its Charter to furnish ample railroad facilities to the inhabitants of the City of Cairo. It is manifest from the pleadings and the evidence that such duty was satisfactorily performed.

But the additional powers granted to Plaintiff in Error after the date of its Charter, and its action in leasing and operating other railroads in other States brought it completely within the scope of the Act of Congress of February 4th, 1887, and rendered nugatory any State legislation that would interfere in any degree with its action as a Common Carrier between the States.

The contention of Plaintiff in Error is that the proviso of the Illinois Statute, *as interpreted* in the Opinion of the Illinois Supreme Court in this case, creates a burthen on inter-state traffic and is an unwarranted delay of the United States Mail. It may be that no other Court on earth would interpret the proviso of the Illinois Statute as it stands interpreted in this Case. That proviso reads thus:

"PROVIDED, all regular passenger trains shall stop a sufficient length of time at the railroad station of county seats to receive and let off passengers with safety."

It is not probable that any Court will ever again decide that to "stop at" means "to go to." But the Statute of a State is exactly what the Court of final resort in that state decides that it shall be. *Therefore* this Court in adjudicating the rights of Plaintiff in Error

must treat the Illinois Statute as requiring Plaintiff in Error to have its train carrying inter-state Commerce and the United States Mail for States South of the Ohio River to go three miles and a half down to the old depot at Cairo making seven miles of an unnecessary detour. Thus we have in the record a case which is *sui generis*. There has been no such case and it is not probable there will be another similar case. Plaintiff in Error had the right to build the inclined plane and place a track on it and connect that track with its main track and also with the track on the Bridge. That is exactly what is authorized by the Act of February 25th, 1867, above quoted It had the power to operate and run trains on leased railroads in other States by virtue of the Act of the Illinois Legislature of February 12th, 1855, already referred to, which Act is in the following words:

"Be it enacted by the People of the State of Illinois represented in the General Assembly:

Section 1. That all railroad companies incorporated or organized under or which may be incorporated or organized under the authority of the laws of this State, shall have power to make such contracts and arrangements with each other, and with railroad corporations of other States, for leasing or running their roads, or any part thereof; and also to contract for and hold in fee simple or otherwise, lands or buildings in this or other States for depot purposes; and also to purchase and hold such personal property as shall be

necessary and convenient for carrying into effect the object of this Act.

Section 2. All railroad companies incorporated or organized, or which may be incorporated or organized as aforesaid, shall have the right of connecting with each other, and with the railroads of other States, on such terms as shall be mutually agreed upon by the companies interested in such connection."

And the second clause of the third section of the Act of Congress of February 4th, 1887, seems to contemplate and encourage the course pursued by Plaintiff in Error in connecting itself with its leased line on the bridge. Therefore it is a just conclusion that Plaintiff in Error might lawfully organize a fast mail train in Chicago to carry the United States Mails to New Orleans and to carry such passengers from the States North of the Bridge to the States South of the Bridge, as choose to travel on that kind of train, and to carry them over the Bridge without going down into Cairo.

THE LAW OF THE CASE.

I.

The Supreme Court of Illinois, (see last paragraph on page 118 of printed record,) says:

"Is is contended by the Appellant that the enforcement of the proviso to section 88 to the extent of compelling Appellant to operate its South-bound Fast Mail Train down into Cairo would conflict with section 8 of article 1 of the

Constitution of the United States, which confers upon Congress the power "to regulate commerce among the several States." That the proviso in question is not invalid, as being a regulation of inter-state commerce, has been expressly decided by this court."

The last sentence of the paragraph quoted does not speak the highest degree of truth. It is misleading. It is a begging of the question. The proviso referred to, *as interpreted* in this Case, was not considered at all in the cases cited by the Court.

The State Circuit Court, by sustaining the demurrer heretofore considered, struck out of the petition all reference to the Contract made by Plaintiff in Error with the Post Office Department, and the Supreme Court of Illinois seeks to justify the Circuit Court. And the fallacious manner in which the Court proceeds with the justification will appear in the following sentence of the Opinion:

"A subsequent contract with the Post Office Department would not authorize the appellant to abandon the use of any part of the road thus constructed to a point selected in pursuance of a discretion conferred by the Federal Congress."

(See page 120 of printed record.)

On the contrary, there is not one sentence or word in the entire record tending to show, in even the slightest degree the abandonment of, or disposition to abandon, the three miles and a half of its railroad between the old depot in Cairo and the point where Plaintiff in Error began to build the connecting track between its

main track and the track on the Bridge. *Six regular passenger trains operated by Plaintiff in Error on its Illinois Railroad ran daily into Cairo to the old depot.*

In its effort to apply to this Case the rule laid down in a wholly different Illinois Case, which it cites, the Supreme Court of Illinois uses the following language:

"It may suit the interest or convenience of a railroad company that certain of its trains destined for different points in other States and known as 'through trains' should follow a new route and pass around or away from one of its long established depots; but such mode of operating the 'through trains,' where the depot so established is both the railroad station of a county-seat and the legal terminus of the original road in this State, amounts not only to an evasion of the proviso of Section 88, but virtually and in effect to an abandonment of a part of the company's road."

(See page 118 of printed record)

But there is nothing in the pleadings or in the proofs which would make this case subject to the foregoing criticism, which is taken from the case of *The People ex rel. etc. vs. L. & N. R. R. Co.* 120 Ill. 48. And that case is no more like the case at bar than "fac simile" is like "sick family." That case arose from an effort to change the terminus of the railroad to a point a quarter of a mile outside of the limits of the town of McLeansboro. In that case, in the last paragraph on page 64 of 120 Ill., the Court says:

"After having built the road, it was bound to run its trains over its entire line, in such a manner as to afford reasonable facilities for the prompt and efficient transaction of such legitimate business as should be offered it on any and every part of its road."

In the case at bar the record shows that "reasonable facilities"—very ample facilities—were furnished to the public at Cairo by the Plaintiff in Error in pursuance of its rights and duties under its Charter.

We have followed the Illinois Supreme Court thus far to show that it has considered neither the facts nor the law of this case with a high degree of intelligent scrutiny; and the field for such following is coterminous with the Opinion, but we pass on.

In reaching a just conclusion in this case we will gain light by considering the consequences of affirming the judgment in this case. If the railroad facilities that the public at Cairo may properly demand from Plaintiff in Error can be supplied abundantly by six daily passenger trains, and if the public demand twenty passenger trains, for inter-state travel, then, if the judgment in this case is affirmed, each of those twenty daily passenger trains must travel more than seven miles out of the line Plaintiff in Error has established, and thus seven miles are added to the distance between Chicago and New Orleans, and the same arbitrary seven miles will be added to the distance between all the towns and cities North and South of the Bridge. And to every inter-state traveller there will be added twenty-one cents of additional fare, and the unneces-

sary loss of three quarters of an hour. And to the Plaintiff in Error there will be added the additional wear and tear of seven miles of unnecessary travel upon its track and rolling stock, which is practically a tax on the facilities of Commerce. And no matter by what name you call the 21 cents additional fare, it will be so much unnecessary tax on the inter-state traveller.

The mere statement of these facts seems to carry along with it the irresistible conclusion, that the results logically consequent upon the affirmance of this judgement will be a heavy, unnecessary burthen on inter-state travel. The condition thus evolved out of the facts cannot be belittled by attempting to place this case in the same category with those cases where trains were required to stop at crossings, or for inspection, or to go slow through towns. Such requirements are necessary for the protection of life and property and are therefore safely within the rule in reference to State Police regulations. But in the case at bar the alleged requirement under a false interpretation of the *proviso* to Section 88 is wholly *unnecessary* and does not contain a single element that would properly make it a State Police regulation. We appeal to the record and to the law in support of our propositions.

3.

In Stone vs. Farmers' Loan & Trust Co., 116 U. S., the Court says:

"So it may make all *needful* regulations of a Police character for the government of the Company while operating its railroad in that jurisdiction."

We think we may correctly say that all cases which refer to the bearing of State legislation on inter state Commerce, limit the powers of the State to the making of *necessary* regulations of the Carrier.

In the *Fargo* vs. *Stevens*, 121 U. S. 230, it is held substantially that the fact that a State has granted a franchise to a local corporation will not justify the State to place a burthen on inter-state business done by the Local Corporation. Part of the language of the Court on this subject in this Case is as follows:

"But where the business so taxed is commerce itself, and is commerce among the States or with foreign Nations, the constitutional provision cannot thereby be evaded; nor can the States, by granting franchises to corporations engaged in the business of the transportation of persons or merchandise among them, which is itself interstate commerce, acquire the right to regulate that commerce, either by taxation or *in any other way*."

In *C. & C. Bridge Co. vs. Commonwealth of Kentucky*, 154 U. S. on page 215, the Court quotes approvingly from the Farmers Loan & Trust Company Case, *Supra*, the following language:

"Nothing can be done by the Government of Mississippi which will operate as a burthen on the inter-state business of the Company, or *impair the usefulness of its facilities for* inter-state traffic."

This Court has distinctly recognized the "bridge" as one of the facilities of inter-state traffic; and it would

seem only to require the statement, to establish the proposition, that the compelling of Plaintiff in Error to haul its 100 trains, or its 20 trains or 1 train of inter-state travel seven miles unnecessarily before reaching the bridge would be impairing the usefulness of the bridge. Certainly this "bridge route" would lose business if all the traffic was compelled to make the useless seven miles trip to the old depot down in Cairo and back to the point of departure from the continuous line.

In *Railroad Companies* vs *Richmond* et al., 19 Wallace 584, the Court says:

"The Act of Congress of June 15, 1866, 14 Stat. at L., 66, authorized every railroad company in the United States, whose road was operated by steam, and its successors and assigns, to carry upon and over its road, boats, bridges and ferries, all passengers, troops, government supplies, mails, freight and property, on their way from one State to another State, to receive compensation therefor, and to connect with roads of other States, so far as to form continuous lines for the transportation of the same to their place of destination. The act of July, 25, 1866, 14 Stat. at L., 244, authorized the construction of certain bridges over the Mississippi river, and among others a bridge connecting Dubuque with Dunleith, in the State of Illinois, and provided that the bridges, when constructed, should be free for the crossing of all trains of railroads terminating on either side of the river, for reasonable compensation.

"These Acts were passed under the power vested in Congress to regulate commerce among the several States, and were designed to remove trammels upon transportation between different States, which had previously existed, and to prevent the creation of such trammels in future, and to facilitate railway transportation by authorizing the construction of bridges over the navigable waters of the Mississippi. But they were intended to reach trammels interposed by State enactments or by existing laws of Congress."

In *Smith* vs. State of *Alabama*, 124 U. S. on page 465, the Court quotes approvingly from Sherlock vs. Alling, 93 U. S. 99, the following language:

"But upon an examination of the cases in which they were rendered, it will be found that the legislation adjudged invalid imposed a tax upon some instrument or subject of commerce, or exacted a license fee from parties engaged in commercial pursuits, or created an impediment to the free navigation of some public waters, or prescribed conditions in accordance with which commerce in particular articles or between particular places was required to be conducted. In all the cases the legislation condemned operated directly upon commerce, either by way of tax upon its business, license upon its pursuits in particular channels, or *conditions for carrying it on.*"

We submit that the action of the Illinois Court in compelling Plaintiff to operate its train, called the Fast Mail Train, and organized as an interstate train, by

making a detour of seven miles down to the old depot in Cairo, is imposing a "condition for carrying on" the interstate commerce on that train. In unvarnished terms the Illinois Court says you shall not operate this train that you have specially organized as an interstate train unless you travel seven miles out the straight line of travel. No answer to this and similar propositions has been made. The statute of Illinois, under the queer interpretation of the Illinois Court, certainly attaches a burden and a condition upon interstate commerce.

3

The Illinois Supreme Court, in its Opinion, (on page 119 of the printed record) uses the following language:

"This Railroad Company accepted its Charter upon the implied condition that its franchises would be exercised subject to the power of the State to impose such reasonable regulations as the *comfort*, *welfare*, or *safety* of society might require."

But there is not a sentence or word in the record which tends to show that the comfort, welfare, or safety of society, or of any single individual man, woman or child was affected in the least degree by the failure of the Fast Mail train to go down into Cairo to the old depot at Second Street. It will not be forgotten by the Court that the record shows that the comfort, safety and welfare of Cairo and the public were abundantly cared for by Plaintiff in Error by operating six through trains per day into Cairo down to the old depot. Nor

does it appear in the record that any of the reasons for the passage of the Statute in question existed. The record does not show that there is any railroad station on Illinois Central Railroad in Alexander County, Illinois, except Cairo. The record is silent on that subject. But it is a matter of geographical and topographical, and historical knowledge that the north boundary, of Alexander County at the point where Illinois Central enters that County is Cache River, and that the railroad of Plaintiff in Error traverses a deep bottom between Cache River and Cairo that overflowed and had never been inhabited and that there never has been any Station on Illinois Central Railroad in Alexander County, except Cairo. Therefore there was no one in Alexander County outside of Cairo to be accommodated by any train of any kind running down into Cairo.

IT WILL BE OBSERVED that there is an implied admission by the Illinois Court that the Court's interpretation of the proviso above quoted does place a condition on interstate commerce, but that the condition so placed is a police regulation for the comfort, welfare, or safety of society. We have shown that the Record does not disclose any connection between the comfort &c of society and the operating of the Fast Mail train to the old depot at Second Street; and thus by the admission of the Illinois Court, the *proviso*, as interpreted by the Illinois Court, is a regulation of interstate commerce.

We beg for the patience of the Court while we continue to use the Opinion of the Illinois Court as the best method of demonstrating that the interpretation given to the *proviso* by the Illinois Court makes that proviso a regulation of interstate commerce.

4.

On page 119 of the printed Record, the Opinion of the Illinois Court speaks as follows:

"Counsel for Appellant concede that section 88 is not a regulation of interstate commerce if it be construed as merely requiring trains which pass through county-seats to stop long enough at the stations to receive and let off passengers with safety; but it is claimed that the section is a violation of the Federal Constitution and an interference with the Federal Government, if it be so enforced as to require a fast train, carrying the United States mail and on its way to New Orleans through several States south of the Ohio river, to go to the regular passenger station at Cairo and stop there long enough to receive and let off passengers with safety instead of proceeding over the Ohio River bridge without going to said station."

If this Court may review the interpretation given by the Illinois Court to the *proviso* of section 88 of Chapter 114 of the Revised Statutes of Illinois, 1874, you will not hesitate one moment to say that such interpretation is absurd. The *proviso* must be interpreted in connection with the context of the entire section. The entire section appears in our Brief and also on page 110 of printed Record, where it appears as section 25 in the Session Acts. It will be observed that the body of the section requires all railroad companies to stop their trains at stations where they are advertised to stop a sufficient length of time to receive and let off pas-

sengers with safety. The exact language of section 88 of Chapter 114 of Revised Statutes of Illinois 1874, the same being section 25 of the Session Act as it appears in the Opinion of the Illinois Supreme Court, is as follows:

"SECTION 25. (Time of stop at stations). Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station, advertised by such corporation as a place for receiving and discharging passengers, upon and from such trains, a sufficient length of time to receive and let off passengers with safety: *Provided*, all regular passenger trains shall stop a sufficient length of time at the railroad station of county seats to receive and let off passengers with safety."

It is broadly manifest that trains were only required to stop on their *arrival at a station*; and that the purpose of the statute was to require the trains to stop *long enough* for passengers to get on and off the train with safety. The evil was the *short stops* of the trains The remedy was to compel the railroad corporations to increase the *length of time* of the stops. And the original statute only applied to trains which were scheduled to stop at certain stations. The *proviso* was really only an amendment, and did not at all change the purview. The amendment extended the mandate of the statute to all *regular* passenger trains whether scheduled to stop or not, provided the station was a county seat. Now, what was the mandate of the statute? Clearly the mandate was that every *regular* passenger train should stop on *its arrival at each station*,

and stop *long enough* for passengers to get on and off with safety. The statute was not intended to compel trains to go to stations. Its plain letter and its manifest spirit condemn the absurd interpretation given by the Illinois Court.

A very high degree of respect is due the highest court in a State. And we have already gone farther, perhaps than this Court would go in expressing the opinion that the statute of a State is the interpretation given to it by the highest court in the State. But it has seemed to us that there ought to be a full developement of the true interpretation of a statute which is being used as a weapon of war upon interstate commerce. And if the judgment of the Illinois Court is allowed to stand and is followed to its logical consequences, it will be found that the *proviso* is a far reaching weapon of evil to interstate commerce.

We have already shown the burthensome operation of the *proviso*, as interpreted, on trains, which leave the main line of Plaintiff in Error three-fifths of a mile north of the corporate limits of Cairo. If Plaintiff in Error should have a branch line of railroad leaving its main line more than 3 and a half miles from the old depot in Cairo and should wish to operate an interstate train thereon, the rule laid down by the Illinois Supreme Court would require such interstate train to go down into Cairo to the old depot at Second Street. It is true, as well known matter of fact, that Plaintiff in Error has surveyed a line for a branch railroad from a point at the foot of the Ozark Hills in Illinois about 26 miles north of Cairo, to a point opposite Padu-

cah in the State of Kentucky, preliminary to building a railroad to connect with railroads terminating at Paducah for the purpose of doing interstate transportation of freight and passengers. It is also true that this important matter of fact does not appear in the record. But we may present the facts in the form of a hypothetical case. Suppose it were true that Plaintiff in Error had built a branch railroad from a point further north than three and a half miles from the old depot in Cairo to a point opposite Paducah in the State of Kentucky for the purpose of connecting with railroads terminating in Paducah, and doing interstate business —in such case it is certainly true that the rule of interpretation of the *proviso* adopted by the Illinois Court would require all the trains made up in Chicago with mails and passengers for Paducah and Nashville or Birmingham, to go down into Cairo to the old depot at the corner of Second Street, whether they contained a passenger for Cairo or not.

We call attention of the Court to our last quotation from the Opinion of the Illinois Court as showing that the Federal question was fairly before that Court; and also that it was evasively passed upon. The concession of Plaintiff in Error in the trial court was that the *proviso* necessarily meant that where regular passenger trains *passed by* a depot at a county seat they should stop a sufficient length of time at the depot to allow passengers to get on and off with safety and that the *proviso* thus naturally interpreted had been held in one Illinois case by the Illinois Supreme Court not to be a regulation of interstate commerce. But Plaintiff in Error claimed, as is manifest all through the Record,

that if the *proviso* should be so interpreted as to require a train, carrying passengers and mail for New Orleans or other points south of the Ohio River to go to the old depot in Cairo, and return to the branch road extending to the Bridge and connecting with another road on the Bridge, *making a detour of seven miles*, it would necessarily operate as a burdensome condition imposed by the State on interstate traffic and mails.

And we submit that there is a failure by the Illinois Court to make successful answer to our contention. The Opinion cites and quotes cases not pertinent. It does not fairly discuss the question whether a detour of seven miles by a train carrying interstate mail and passengers is a burthen on commerce between the States. (On page 56 of printed Record and other places in the Record, is evidence that the train in controversy carried interstate passengers). We state with thoughtful confidence that there is no Illinois case at all like the case at bar. The case at bar shows a long stride in the way of encroachment by the State upon Federal Jurisdiction. The common sense of the English speaking people determines many questions without argument. You may legally carry a concealed pocket knife with a blade even 4 or 5 inches long if the blade is sheathed in the handle. But you may not legally carry concealed a knife, and *call it* a pocket knife, with an open blade 12 inches long. We determine at once the essential difference between the knives. One is a deadly weapon, and the other is not.

In the same way we reach the conclusion that to make a train stop at all crossings, or to stop at such depots as its course may pass through county seats, is

a legitimate State regulation; because it may add to the safety or comfort of the people of the State. And by the same healthy process of the common mind we reach the conclusion that to make a train carrying interstate passengers and mail unnecessarily travel over seven miles out of its course is not a legitimate State regulation. To do so can not properly be called a police regulation; it has none of the essential elements of a police regulation. It does not "contribute to the comfort, safety, or welfare of the public." (See Opinion on page 119 of printed Record). It certainly is "one of the trammels interposed by State enactment" referred to in *Railroad Companies* vs. *Richmond et al*, 19 Wallace, 584.

One of the first canons of interpretation directs that it is not permitted to interpret what has no need of interpretation. When an Act is expressed in clear and precise terms, when the sense is manifest and leads to nothing absurd, there can be no reason not to adopt the sense which it naturally presents.

We think we well understand the rule of this Court to be that it will accept the *interpretation* of a statute of a State by the Supreme Court of that State as final and binding. But there may be something like an exception to the rule. Where a statute of a State is called by a State Supreme Court a mere police regulation of a railroad, whereas it is, as interpreted by the State Court, manifestly a trammel on interstate commerce, this Court will not be bound by the interpretation of the State Court. The State Court will not be permitted to construe a statute so that it becomes a *trammel*

on travel between the States, and then call it merely a State *police regulation*.

5.

On page 116 of the printed Record it will be found that the Opinion of the Illinois Supreme Court contains the following language:

"In other words, the construction which counsel place upon the proviso to section 88 is that where the passenger train of a railroad company passes the passenger station at a county seat on its way to some destination beyond the county seat, it must stop at the station long enough to receive and let off passengers, but that if it is not necessary for such train to pass the station at the county seat it is not obliged to go there or to stop there. This construction limits the proviso to a mere requirement as to the length of time during which trains must stop at railroad stations of county seats in case they happen to pass such stations. If such is the correct view of the proviso as applied to such a state of facts as is disclosed by the record now before us, every railroad company in the State which has been in the habit of stopping its passenger trains at such stations may turn them into some other track at a point within a short distance of the station and pass around the county seat altogether."

The foregoing is a most defective statement of what it undertakes to state. It incorrectly states the interpretation of the *proviso* given by Plaintiff in Error. According to our interpretation of Section 88, it contains a mandate to all passenger trains *to stop*—but to stop where?--plainly *at each station*--but when to stop?--clearly when they *arrive at a scheduled station*—a sufficient length of time to let passengers get on and off with safety. And the only purpose and the effect of the *proviso* was to place all *regular* passenger trains in the same position as all *scheduled* trains were placed by the purview. The laws of our language, the dictates of common sense, and the canons of interpretation all unite in condemning the interpretation of the Illinois Court. Cairo is the terminus of the original State railroad built and owned by Plaintiff in Error. The *proviso* was not intended to apply to termini. The terminus in connection with Section 88 is as a *casus omissus*.

(We have referred again to the interpretation of the Statute to show what slender consideration was given to the case at bar).

The Opinion then indulges in a hypothesis wholly unwarranted by anything in the Record. It seeks to bolster its interpretation by indicating the evil consequences of any other interpretation.

It suggests a wholly improbable course of open rascality by all the railroad companies that do not want to take their trains to county seats, which rascality would consist of building a new line of railroad from a point on the main line near the station around to another point on the main line beyond the station; thereby dodging the county seat. But such a supposed course of rascality by other railroad companies is not in any degree applicable to Plaintiff in Error. Under the circumstances as they appear in the Record there could be no such thing as building from one point on the line to another point and thus avoiding the county seat. Here the county seat is the terminus.

The open rascality suggested by the Court as a consequence of a rational interpretation of the *proviso* would be such flagrant fraud that a court of Equity would furnish a remedy. The suggestion of such open rascality is a consequence of the dearth of fair argument to sustain the action of the court. And there is not anything in the Record warranting the wholly improbable suggestion of open rascality by the Plaintiff in Error. As a common carrier of interstate commerce Plaintiff in Error has no occasion to dodge the county seat; and there is nothing in the Record justifying an intimation that Plaintiff in Error was seeking to avoid the county seat.

Plaintiff in Error in the trial court sought to pre-

sent the reasons why the Bridge was built where it is in a part of paragraph 5 which was stricken out by the trial court. The part which we refer to will be found on page 22 of the printed Record and is as follows:

"This respondent shows that the peculiar conformation of the land and water at and near the junction of the Ohio and Mississippi rivers is such that a bridge across said Ohio river connecting the southern and northern parts of the 'Central railroad' mentioned in said Act of Congress is not practicable at any point nearer to the end of its track on the bank of said river in Cairo or below it than the place where it now is, and that even at the place where it now is it became necessary, in order to avoid the Mississippi river in its course above the city of Cairo, to curve the incline or approach to said bridge from the north sharply to the east after leaving said bridge, the elevation of said bridge, as required by the act of Kentucky and by the general acts of Congress, being so great that it is sixty-seven feet above the natural level of the ground on the Illinois side of said river."

6.

IT WILL BE REMEMBERED that a demurrer was sustained to all the paragraphs and parts of paragraphs in our Answer, which alleged, or even made reference to, the facts which establish the interstate character of the train in controversy, and thus so much of our defence as arose from the char-

acter and condition or Plaintiff in Error as an interstate carrier of commerce was stricken from the Answer.

If our Answer had not been mutilated Plaintiff in Error would have proven every averment in the paragraphs to which the demurrer was sustained. Among other matters we could and would have proven:

1. That the line of railroad crossing the Ohio River "at or near" the junction of the Ohio and Mississippi Rivers was conceived by the Federal Government and by the Act of Congress of September 20th, 1850 was manifestly intended for Federal purposes:

2. That by the 4th section of that Act it is in terms provided that **"the said Railroad and branches shall be and remain a public highway for the use of the Government of the United States free from toll or other charge upon the transportation of any property or troops of the United States;"** and that also in section 6 of that Act it is provided **"that the United States Mail shall at all times be transported on the said Railroad under the direction of the Post Office Department:**

3. That the conformation of the ground near the junction of the two Rivers was such that when Plaintiff in Error built its railroad, the Illinois Central Railroad as a link in the great interstate Railroad from the Lakes to the Gulf, contemplated by Congress, its railroad came to the Ohio River at a point over two miles north of the old depot at Second Street down in the town of Cairo and in its original purchase of land at

Cairo in 1851 that Plaintiff in Error bought a parcel of land fronting 500 feet on the Ohio River at the point where the shore pier of the Great Steel Bridge, the longest on the Continent of America, now stands, as constructed by the Chicago, St. Louis and New Orleans Railroad Company and leased to Plaintiff in Error in connection with its entire railroad from the north end of the said Bridge to New Orleans:

4. That the purchase of that parcel of land was made notoriously in anticipation of the building of a Bridge to connect together the north and south links of the "Central Railroad" as it is called in the 7th section of the aforesaid Act of Congress, and as the only point where a bridge could be built near the confluence of the two Rivers; and that, as partially appears in the Petition of Defendant in Error (page 2 of printed Record) Plaintiff in Error built two or three miles of its railroad meanderingly down the Ohio River Levee to a point which, by the changes of the Mississippi River, is now more than a mile from the confluence of the two Rivers:

5. That Plaintiff at the time of, and before, the filing of the Petition for Mandamus was operating daily six regular passenger trains down along the meandering line of the Ohio Levee to the old depot in Cairo, which furnished more railroad facilities (exept suburban trains) than were furnished to any town in the United States of, or near, the same population as Cairo:

6. That from the point from which the straight line, as a connecting link, starts toward the Bridge, to the old depot in Cairo, is over three miles and a half along the road built under its original Charter by Plaintiff in Error. That two miles of the 3 1-2 miles runs along a public street of Cairo and over 21 street crossings in going to the old depot and the same number of street crossings in backing to the place of departure, and that

this is done under a speed limiting ordinance so that in running under such ordinance over forty and near fifty minutes of time would be used by the train in controversy in making the trip to the old depot and backing to the place of departure.

7. That the said Bridge was built at the only point where it could be built near the confluence of the two Rivers, and that also it is built on the shortest line of connection between the north and south links of the "Central Railroad" and the continuation of that Road as provided for by Congress in the above mentioned Act:

8. That Plaintiff in Error was carrying passengers between the States in the train in controversy and that said train had been specially organized to carry a fast mail under a contract with the Government, and under a schedule prepared by the Post Master General which did not permit the Fast Mail train to go down into Cairo to the old depot, a detour of over seven miles, occupying probably 50 minutes of time.

And Plaintiff in Error was ready to prove all the averments in the eliminated paragraphs.

IT WILL THUS BE SEEN that the Illinois Supreme Court so far encroaches on Federal Jurisdiction that it will not even let Plaintiff in Error be heard to set up its character and its rights as a carrier of interstate commerce and interstate mail. And if the action of that Court be affirmed by this Honorable Court, Plaintiff in Error will be defenceless as to its character and rights as an interstate carrier.

7.

IT WILL BE OBSERVED that the Illinois Supreme Court either totally ignored, or entirely forgot to consider, what seems to us to be the very important matter

of the dual relation in which Plaintiff in Error stands toward the State and toward the United States. We will not repeat our views on this subject, beyond calling attention to them.

Plaintiff in Error is a corporation created by the State of Illinois with power to build a railroad in Illinois, and as such is strictly a domestic corporation. But subsequent to the passage of its organic Act, its powers were greatly increased. Its dormant character, which existed by virtue of the Act of Congress granting the land for its construction, was developed by Acts of the Legislature of Illinois already referred to and by the Interstate commerce laws, and Plaintiff in Error became an interstate railroad company.

But the Opinion of the Illinois Supreme Court, after very briefly referring only to the Charter of Plaintiff in Error and to the Act of Congress of September 20, 1850, rapidly reaches a conclusion and expresses it in these words:

"But we apprehend that such arrangement as the Appellant Company may have with the Post Office Department of the Federal Government for the transportation of the mail can not have the effect of abrogating a reasonable police regulation of this State."

And this is a mere begging of the question. The question to be decided is this:

Under the circumstances appearing in the Record, was the mandate requiring Plaintiff in Error to haul the train in controversy more than seven miles out of

its course, when the Record does not show that any body in Illinois would be accommodated thereby, and equally the Record does not show that either the public as a community, or any one individual person or any group of persons, would be injured or discommoded by a failure to haul the train seven miles out of the straight course—in such case was the mandate a reasonable State police regulation? As we view and understand words and their meanings, it has none of the peculiar and necessary elements of a police regulation.

The Chicago and Alton R. R. Co. vs. *The People for use &c., 105 Ill., 657* in the case relied on as authority to support the decision in this case. That case and the case at bar are not at all alike. That case was where there was a plain violation of the letter of section 88. That case was where the train regularly passed by a station and refused to stop for a brief period. Whether the proviso to section 88 in its application to the train mentioned in that case was a violation of the spirit of the interstate commerce laws was never decided by a Federal Court. And it is interesting in connection with the case at bar as showing the slender authority used to support this case, and also as showing the very wide difference between the case at bar and the *Chicago and Alton* case. The latter case was at the dividing line between state and national jurisdiction. The case at bar is clearly within the spirit and purpose of the interstate commerce laws.

8.

A CASE VERY SIMILAR, in some respects, to the case at bar has has recently been considered by the

Federal Circuit Court for the Northern District of Illinois on a motion for an interlocatory order. A knowledge of this case has come to us since the larger portion of our Brief was written; and we think, as the case is new in some of its features, we may properly ask the Court to consider the views of the Judge who passed upon the motion.

We refer to the case of *The People &c. ex rel Sweeney vs The Rock Island Pacific Company*, which is a Petition for Mandamus, begun in the Circuit Court of Rock Island County, Illinois, and removed, on petition, to the Federal Circuit Court for the Northern District of Illinois. A motion was made to remand the case to the State Circuit Court, and that motion was heard by JUDGE GROSSCUP, who overruled the motion to remand, and delivered a written opinion in support of the action of the Court.

The defendant in the above mentioned case was chartered by the Illinois Legislature in 1847 to build and operate a railroad from the town of Rock Island in Illinois to LaSalle in Illinois. Subsequently the charter was amended authorizing an extension to Chicago, and when the road was completed the depot at the Rock Island terminus was fixed at the foot of 20th Street in that City.

In his Opinion JUDGE GROSSCUP, after referring to the construction given by the Supreme Court of Illinois in the case at bar, uses this language:

"From this construction of the statute it pretty clearly appears that the defendant, if it were wholly an intra-state road, would be re-

quired to maintain its station at the original locality, and run to such station all its passenger trains. But, about the time the Illinois line was chartered there was organized under the laws of Iowa a railway company to build and operate a road from the eastern line of the State at a point opposite the Island of Rock Island to Council Bluffs. To connect these two roads, at that time separate corporations, a bridge company was organized under the laws of Illinois to build a bridge across the Mississippi River. This connecting link which included a line of road across the island of Rock Island, was completed in 1856. Ten years later the two railway companies were consolidated under the acts of the legislatures of both Illinois and Iowa, and thereafter under the name of the Chicago, Rock Island & Pacific Railroad Company, became a single line of railway. The Company has since extended its line throughout the States of the west and now operates some 3500 miles of road, nearly all the through traffic of which passes over the bridge at Rock Island, and thence, over the original line from the Mississippi River to Chicago."

* * * *

"A continued use of the original station thereafter as a stopping place for all passenger trains would have required the Railroad Company to divert these trains from the main line over the connecting link and back again a dis-

tance altogether of two miles or more. The city of Rock Island, in the meantime, had grown up around this end of the old road so that the connecting link ran through a thickly populated district and across a number of busy streets. To maintain a depot at that point for its through passenger trains clearly entailed a great loss of time in the dispatch of these trains eastward and westward from Rock Island. The Company, accordingly, in December 1872, established a new station about a mile eastward of the old one, and in 1878, established its station again still farther eastward so that it is now about a mile and one-third east of the original station. The prayer of the relator, that all of the passenger trains of the defendant company be required to stop at the original station, is not limited to passenger trains running only within the State of Illinois, but includes also as well all the trains of the Company that are used to convey passengers from one state into another, and in that aspect of the case comes under the consideration of this Court upon the pending motion."

And he also in the Opinion uses the following language:

"Interstate commerce, subject to regulation by Congress, includes not simply the buying and selling of goods, but also the means of their transportation and of the transportation of persons engaged therein. The passenger trains of

the defendant road run through different states and are the vehicles by which Interstate commerce is largely carried on. Any impediment to these trains not necessitated by essentially police considerations, and serious enough to amount to a burden or restraint, caused by state legislation, may, I think, be regarded as a probable invasion of the national right of regulation of Interstate commerce. What would be thought if the State should attempt by legislation to stop all passenger trains at every highway crossing, or reduce their speed to six miles an hour from one end of the State to the other? Could national commerce submit to any such unreasonable restrictions? Would not such a restriction be in the strictest sense a burden upon, and an attempted regulation of, Interstate traffic? What argument, not merely chimerical, could be advanced, in the name of public safety and health, for such a heavily restraining hand upon the business of this generation?"

And the concluding paragraph of the Opinion is as follows:

"The Federal Courts have steadily refused to lay down any rule rigidly fixing the boundaries either of the police power of the State or the Interstate commerce power of the United States. Any fixed line of demarkation between these powers is in the very nature of the case insusceptible to exact description. No court is wise enough by a generalization to forecast the

cases of conflict that will arise, or the line that must separate them. Only as the cases specifically arise will the courts attempt to discern the point where police power ends and commerce regulation begins, careful always to see that no right belonging to the State in the interest of the safety and health of her citizens is appropriated by the Nation, and equally vigilant that no power belonging to the Nation is surrendered under the mere guise and semblance of a police regulation; and the Nation, to maintain its supremacy, must always insist that debatable cases shall be settled in its own tribunals. The motion to remand is overruled."

IN CONCLUSION the Plaintiff in Error submits that the vast and growing interstate commerce by its system of railroads that pours, as into a funnel, over the connecting link that unites its original road with the southern end of the system, ought to be protected from the **"trammels interposed by State enactments."**

The current history of the country, which will be judicially considered, shows that the railroad system of Plaintiff in Error is truly national in character, that it is the most extensive north and south railroad system on the continent, and that it is the chief and almost the exclusive carrier of the great migration of people from the Northwest to the South and Southwest which great migration, if the mandate of the Illinois Court shall stand, must be forever hauled more than seven miles of unnecessary travel before it passes over the connecting Bridge, which was built to facilitate travel and to increase rapid transit between the States.

It is also part of the current history of the country that the products of the Northwest are seeking a new road to market, and that during the past year more grain was shipped from New Orleans than from New York, and that much the greater part of that grain was carried over the railroad system of Plaintiff in Error. This great artery of national commerce needs national protection from State trammels, and with great confidence in the result Plaintiff in Error now submits its appeal.

WILLIAM H. GREEN,
Attorney for
Plaintiff in Error.

JAMES FENTRESS,
General Solicitor
of I. C. R. R. Co.,
Of Counsel.

Office Supreme Court U. S.
FILED.
MAR 24 1896
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CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1895.

No. 217.

THE ILLINOIS CENTRAL RAILROAD COMPANY, *Plaintiff in Error,*
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. W. N. BUTLER, *Defendant in Error.*

In Error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT OF JAMES FENTRESS,

OF COUNSEL,

For APPELLANT.

BARNARD & MILLER, PRINTERS, CHICAGO.

SYNOPSIS.

I. Brief statement of material facts.

II. AND III. Brief statement of questions involved.

IV., V. AND VI. Exclusive power of Congress over commerce among the several States, shown by—

(*a.*) Natural and root meaning of words used.

(*b.*) Comparison of Articles of Confederation of 1778 and our Constitution of 1787.

(*c.*) Reasons for change of words in, and history of Commerce clause.

(*d.*) Incompetency of separate States, territorially and otherwise--and Constitutional prohibition of making Compacts, even if they could agree on uniform regulations.

VII. Such Commerce itself indivisible.

VIII. Appellant an interstate through line in fact.

IX. Originated, outlined and aided by Congress, as such; chartered and dedicated by the several States to Commerce among the several States, as such.

X. Express authority of Congress and the State of Illinois to connect and form continuous line of uninterrupted communication across the States.

XI. Its National character and duties imposed by Congress accepted and confirmed by the several States--and the right to protection founded thereon.

XII. The Illinois Statute—its construction by State Supreme Court —its effects.

XIII. Rulings of Court, below, on pleading and proof considered.

XIV. Opinion and decree of State Supreme Court, considered.

XV. Classification of United States reported cases.

XVI. Authorities and decisions in cases where Congress has not regulated—considered and applied.

XVII. Regulations by Congress considered, and conclusions reached.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

No. 217.

THE ILLINOIS CENTRAL RAILROAD COMPANY, *Plaintiff in Error,* *vs.* **The PEOPLE OF THE STATE of ILLINOIS, ex rel. W. N. BUTLER,** *Defendant in Error.*	In error to the Supreme Court of Illinois.

BRIEF AND ARGUMENT OF JAMES FENTRESS,

OF COUNSEL, FOR APPELLANT.

I.

THE FACTS UPON WHICH THE QUESTIONS ARISE IN THIS CASE ARE, BRIEFLY:

1. An interstate trunk line of railroad, originated, outlined and aided by Congress, as such, and existing in many states, which have each in charters and general acts dedicated such railroads to public commerce, and authorized or required their connection with each other as a continuous line, so that there "shall be an uninterrupted communication over such railroads and bridge, as public thoroughfares," in accordance with the purpose of Congress.

2. The union under one management of such parts of these several railroads as together make one direct, interstate, through line from the lakes to the gulf, which is used chiefly for interstate and foreign commerce, but, at the same time, full, adequate and complete service over every part of the original lines and branches not parts of, nor so situated as to be made parts of, said through interstate trunk line.

3. A subsequent statute of one of the states, which, as construed by her Supreme court, is a material regulation of interstate and foreign commerce, to the detriment of sister states and general commerce. Among other things (*a*), in compelling by peremptory mandamus an interstate fast mail train to stop its journey to destination at a point on said direct through line where there is no town, village or depot, and go off and away from said through line over three and one-half miles to a town and depot in said state, and return to said point of divergence, a distance, altogether, of more than seven miles, before proceeding to its destination. (*b.*) And compelling said interstate carrier to run *every* one of the interstate mail and passenger trains—*every* regular through passenger train—*no matter how many may be put on*—to such favored depot off from the direct interstate line, and to receive passengers at said depot, notwithstanding said carrier sends six other interstate passenger trains daily to said depot, and otherwise gives said depot full, adequate and complete train service, and in addition thereto has trains to and from said favored depot, connecting with said interstate fast mail train, also. (*c.*) Arbitrarily forcing by mandamus every express, mail or limited passenger train to stop and take on passengers at every county seat depot, no matter how many trains are put on, nor their purpose or destination.

II.

AND THE QUESTIONS TO BE DECIDED ARE,

1. Can either of the states, *in addition* to what is called police regulations, and in addition to requiring reasonable and adequate service by sufficient trains upon every part of the railway in such state, *also* require *every other* through interstate passenger and fast mail train to leave the through, direct line, aforesaid, and go miles *away* therefrom, to a depot on a part of one of said original roads which is not, and is so situated that it cannot be made, a part of said direct, interstate, through line?

2. Can either of said states, in addition to police regulations and requirements of adequate service by a sufficient number of trains, arbitrarily require all other passenger trains and fast mail trains on said through interstate, direct line to *go to* and from a depot not on said direct line, over seven miles, or stop at the depot in every county seat on said through line a sufficient time to *take on or let off passengers?*

3. Can such state, where the service by other trains is full and adequate, force the company operating such interstate railroad, when it puts on other trains for through passengers, or fast mail, no matter how many, to stop every one of such trains at every county seat depot, or at every depot, *to take on or put off passengers?*

4. Can either of these states now transform a railroad so originated, directed and aided by national legislation, for national purposes and interstate commerce, and so dedicated and authorized by the states, into several of mere local character, or by hostile legislation hamper and

restrict the control and management of such an interstate railroad to such narrow and selfish views of the policy of a single state, as such single state might apply to a railroad entirely within her limits, which was never authorized to connect with, nor own, nor operate any othe r railroad outside the state, nor to do any but a purely local business?

5. Can a state resume to any extent the power to regulate commerce among the states or with foreign nations, which she expressly surrendered to the United States in the Federal compact, known as the Constitution of the United States?

6. Can the non-action by Congress—or even its express consent—or the opinions of the Federal Judiciary, that certain regulations of commerce among the states or with foreign nations might more wisely have been left to state or local control, or even the consent of the executive, legislative and judicial authority of the United States combined—change the Federal Constitution; take away any part of the power so expressly fixed in Congress, or surrender such power, or any part thereof, back to the several states?

7. Can a question of the existence or residence of a constitutional power under our written constitution depend in any measure on whether it has been exercised, or the extent to which it has been exercised?

III.

THL COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

The decisions of this court in relation to commerce carried on in water craft over navigable waters have, with the possible exception of pilotage cases and the anomalous Blackbird Creek Marsh case, been consistent with the fact that by the fundamental law, the power of regulation of commerce among the states and with foreign nations is vested exclusively in the United States. So that whether the navigable water was wholly within one state or not, or whether it was made navigable by artificial aids, made no sort of difference.

But in regard to the regulation of commerce among the states and with foreign nations as the same is carried on over the artificial channels known as railroads, the opinions of this court do not seem to be entirely consistent with each other, nor to deal with the question of the residence of the power to regulate commerce, as a part of the constitution which cannot be changed, except as provided therein, or by successful revolution, but rather as a question which, in some of its bearings, could and should be adjusted, as those who made the constitution would possibly have done if they had known then what we know now, or as a question largely of convenience or courtesy as between the federal government and the several states, in which the one might shut its eyes while the others acted. Or that, while the power to regulate was in Congress still, and it might at any time overturn state regulations, yet, so long as Congress did not choose to act the state regulation was lawful. Or that, if Congress passed an act authorizing a state to exercise the

power, or approved of such regulation by the state, it was lawful.

On this account, and also because railroads are now doing almost the whole carrying of passengers and freight among the states, and to ports for foreign shipment, on through tickets or way bills, and the fact that there is now over 170.000 miles of railroad in operation in the United States, and an average increase of such mileage of about 10,000 miles per year, and considering these facts in connection with the growing competition of the several states among themselves, and the efforts of the one to so control commerce among the states and with foreign nations as to build up her towns and people, as against her sister states, it may not be amiss to examine, somewhat, the history of this commerce clause of the Constitution, and consider whether the power to regulate the commerce of the United States resides alone in the national government or in the several states, or in both. And, if in both, where the line dividing their several jurisdictions and powers may be drawn.

Indeed, the time seems to be past when these questions may be quieted by the courtesy or the non-action or the consent of Congress, or the efforts of the judiciary towards a *modus vivendi*.

IV.

It is insisted by appellant that by the Federal compact the states *surrendered entirely the power to regulate commerce among the several states, and with foreign nations, as completely as the power to coin money or regulate the value thereof, or declare war.*

Before referring to the cases which have arisen on the boundaries of Federal and state power, or the history of that part of the constitution, or the natural meaning of the words used in the commerce clause, it is fair to assume that there must be some fundamental tests and rules which should guide us in coming to a just conclusion as to the boundaries of each.

One of these tests is found in the very structure of our dual governments, covering together the same territory; the one Federal or general, the other state or local.

Reason would say, that, in the nature of things:

1. The Federal government should have power in all things to which the state or local government is incompetent.

2. And in all cases where the harmony of the United States may be interrupted by individual or local legislation.

History shows that such is the case.

V.

Article 1, Section 8, Sub. Sec. 3, of the Constitution of the United States, reads as follows:

The Congress shall have power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

What is the proper construction and meaning of these words?

1. Without reference to the history preceding or contemporaneous with the adoption of this clause, as a part of the fundamental law, and before examining any judicial construction thereof, let us see what is its natural meaning.

There are *three* classes mentioned, to wit: "With foreign nations," "among the several states," "and with the Indian tribes," and these three, looking from the District of Columbia and the standpoint of the Federal government, undoubtedly cover the whole world, so far as place or territory is concerned. These three also include the whole human race, so far as it is related to commerce. And these three classes also comprehend, while they distinguish, the relations borne by the United States to the governments of the world, and to the several states constituting the United States and the Indian tribes.

"*With* foreign nations," including those who are without the territory of the United States, and under no allegiance to it; "*among* the several states," those which are included in its boundaries and recognize this fundamental law as the supreme law of the land; and "with the Indian tribes," those who occupy the anomalous po-

sition of being neither foreign nor domestic—within the territory of the United States, and yet not subject to her laws.

So far, then, as the United States Government is concerned, it may be fairly said, that all persons with whom she *can* deal, exist either among the states, or in foreign nations, or with the Indian tribes. *These three classes are exhaustive.*

"We, the *People* of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility" * * * "do ordain and establish" * * * that "Congress shall have power to regulate commerce with foreign nations, and among the several states and with the Indian tribes." These words, in the mouth of "We, the People," aptly and naturally cover the whole commerce in which "we, the people," could ever be engaged, whether within or without the several states of the United States; and, as the history of this provision will show, it was the wisest of all the clauses used by those who had come up from "among the several states," to declare what delegations of power "we, the people of the United States" should make, "in order to establish a more perfect union" and "insure *domestic tranquility.*"

2. Again, it is manifest in reading the whole clause that the words "foreign nations" do not mean simply the constituted authority or government of such nation, for commerce with such government as a government, is practically nothing; but it means commerce with the *people* of such foreign nations, and so commerce with the Indian tribes means commerce with any and all the members of such tribe. Thus it is seen that the words "foreign nations," "Indian tribes" and "several states," are

synonymous with or comprehend all the people respectively who constitute such nation, state or tribe.

If, therefore, it be true, that when it speaks of commerce in relation to the states, it does not mean simply the commerce of one state, *as* a state, with another, or, to be more accurate, the commerce between the public authorities and constituted government of one state with the corresponding public authorities of another state; but also and chiefly means the commerce of the *people* of the several states. It will show something of the strength and meaning of this language as used in the constitution, by putting the real thing in the stead of the name, to wit: "Congress shall have power to regulate commerce of the people of the United States with the people of foreign nations, and commerce *among the people* of the several states, and with the members of the Indian tribes."

3. Again, it does not say that Congress shall have power to regulate commerce *between* the several states; nor "*interstate*" commerce, a word now frequently heard; nor does it say commerce *with* the states, though the word "with" is used both as to foreign nations and as to the Indian tribes; but right in between these clauses as to foreign nations and as to Indian tribes, it says, Congress shall have power to regulate commerce "*among* the several states," not "with," not "between," but "among." Not the commerce of the people of one state *with* those of another state; not commerce *between* the people of each state with the others—not inter-state commerce—but the commerce *among* the people of the several states.

"Among," maengd—indiscriminately mixed within the crowd—so intermingled as to be incapable of desig-

nation or separation—the *exact opposite of* "*between*"—the antipodes of *interstate*.

Worcester gives as the primary meaning of the word "among," "mingled with," "in the midst of," "making a part of," and, as an illustration, adds: There were *among* the old Roman statues several of Venus in different postures and habits."—Addison. 2. "Noting some or some one out of a number indefinitely." "You have *among* you killed a sweet and innocent lady."—Shakespeare. He derives the word from the German, "maengan," "to mix."

Webster's definition of "among" in its primary meaning, is "mixed, or mingled with;" "then heard, and from His presence hid themselves *among* the thickest trees."—Milton. 2. "Conjoined or associated with, or making part of the number of." "Blessed art thou *among* women."—Luke 1, 28.

Johnson says: "Wachter derives the German mengen, to mix, from maengd, a multitude. *Among*, therefore, according to this etymology, means, also, mixed, or in the crowd," quoting passages showing its use, by Gower, Bacon, Milton, Dryden and Addison. See Todd's Johnson's Dictionary, London edition, 1827.

If it be suggested that those who selected the words of this clause of our constitution were unfamiliar with the fundamental idea in the word *among*, or if it be intimated that it was a mere accident that they should have placed in the same sentence the word "among" in such striking contrast with the first and latter part of the clause, it is sufficient to refer such an one to the letters and speeches of that period of our history, yea, to the structure of our constitution itself, which they have builded; and, if a

study of these does not satisfy him that those men were masters of the English language, familiar with all its sharp-edged tools, with its lights of comparison and shadows of contrasts,—with the root meaning as well as with the utmost point to which the sap or sense of a word may be pushed—it is idle to discuss this matter with him, or, indeed, any matter which depends for its elucidation on the terse clearness of the language used.

However it may be explained, here it is, plain, clear, concise, intense. "*With* Foreign Nations." "*With* the Indian Tribes." Commerce *With*—necessarily implying separation, distinction, discrimination. Foreign nation on one side, the people of the United States on the other —Indian tribe on the one side, the citizens of this country on the other—commerce of *the one* with *the other*. But right in the middle, when it speaks of the several states, the whole figure is changed—fundamentally changed—and they use the word "*among*" the several states—mixed in an indistinguishable crowd—mingled together past recognition—"among" the people of the several states.

With the several states, *between* the several states, *here* the lines of separation are drawn; but *there—among* the several states—these imaginary lines are gone, mixed, mingled, indistinguishable, one mass. How that word "among" suggests the one home—united without distinction—together past separation, mixed beyond recognition—"*among*."

The common good, as contradistinguished from one claiming the advantage of location or product or shrewdness above another; domestic tranquility, as opposed to separate envyings and strife,—the harmony produced by blending into one,—the overshadowing all, and resting unequally on none.

What expression more apt, more concise, more clear, than that which is used in our Constitution, "Congress shall have power" "to regulate commerce" "*among* the several states"?

4. It does not say that Congress shall have power to regulate commerce among the several states, *except* such as is confined within the boundaries of one or another of such states.

It makes no distinction between interstate and domestic commerce. Nor between states which have a market in their borders and those which have not. No; but, surveying the whole field of commerce, and from its national standpoint recognizing no state lines or local jealousies, it covers the whole foreign field with the first clause, the whole domestic field with the second, and the Indian anomaly with the third.

VI.

ITS HISTORY.

Was this clause of our constitution contained in the fundamental law which was established upon the declaration of our independence, commonly known as "The articles of Confederation"? or was it inserted in our present constitution for the first time?

If this clause did not exist in the articles of confederation, why was it put in our present constitution? If the words used in the articles of confederation as to the power or want of power in Congress, over trade and commerce, were not adopted in our present constitution, but others substituted, why was such change made?

For it is natural that in the adoption of our present constitution, all changes from the language of the former constitution should be based on some good reason, and that reason would likely be found in the experience and observation of the governed, or the intervening history.

Let us, therefore, "look to the old law, the mischief and the remedy."

"The Articles of Confederation" adopted by the United States as its fundamental law, in defining the power of Congress, declare in article 9, that "the United States in Congress assembled shall also have the sole and exclusive power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states, fixing the standard of weights and measures throughout the United States, regulating the trade, and managing all affairs with the Indians, not members of any of the states. *Provided*, that the legislative right of any state, *within its own limits*, be not infringed or violated."

Here is an exception of such Indians as are members of any state, and also an *express* reservation to each state of certain powers as to regulating trade, etc., not delegated to Congress, thus reserving to each state the power to regulate such matters "within its own limits."

Now, comparing this constitution of 1778 with our present constitution of 1787, the changes are seen to be important, numerous and radical.

The one doles out to the National Government, with a hesitating hand, a few powers, and handicaps even these with express limitations.

In the other, the delegation of power to Congress, as to commerce, is without exception or reservation.

Why was this striking difference made? What occured in the nine years which elapsed between the adoption of "the Articles of Confederation" and the ratification of our present Constitution, to require this radical change in the fundamental law?

The history of that period not only shows in great prominence the reason for this change, but it also makes plain the proper construction of the words used in our present Constitution on that subject.

Even a cursory reader of that history will be struck with the fact that the power reserved by each state, under the Articles of Confederation, of regulating trade "within its own limits," was so exercised as to produce discord, jealousies and retaliations between the several states, to an extent that not only endangered that good will which should exist between them, but threatened the very existence of the Union itself.

Mr. Hamilton, in writing of the "Defects of the Federal System," under the Articles of Confederation, and

mentioning shch defects as render "that system *altogether unfit* for the administration of the affairs of the Union," says: "The want of power to regulate commerce is by *all parties* allowed to be of that number. The utility of such a power has been anticipated under the first head of our inquiries; and for this reason, as well as from the *universal* conviction entertained upon the subject, little need be added in this place. It is indeed evident, on the most superficial view, that there is no object, either as it respects the interests of trade or finance that more strongly demands a *federal superintendence*. The want of it has already operated as a bar to the formation of beneficial treaties with foreign powers, and has given occasions of dissatisfaction *between* the states." * * * "The interfering and unneighborly regulation of some states contrary to the *true spirit of the Union* have, in different instances, given just cause of umbrage and complaint to others; and it is to be feared that examples of this nature, if not restrained by a *national control*, would be multiplied and extended until they became not less serious sources of animosity and discord than injurious impediments to the intercourse between the different parts of the confederacy." * * * "We may reasonably expect, from the gradual conflicts of state regulations, that the citizens of each would at length come to be considered and treated by the other in no better light than that of foreigners and aliens."

Federalist, No. XXII., pp. 104, 105; also pp. 33 and 56.

General Washington, in referring to the report in May, 1785, of a committee of Congress on the motion of Mr. Monroe, that Congress should have the power "of regulating the trade of the states, as well with foreign

nations as with each other," etc., says: "We are either a united people or we are not so. If the former, let us in all matters of general concern act as a nation which has a national character to support; if we are not, let us no longer act a farce by pretending to it." And he adds the suggestion that if "the States shall act independently of each other, it becomes indispensably necessary to provide good militia laws and to look well to the execution of them."

The Writings of Washington, by Sparks, Vol. 9, pp. 146 and 501.

See, also, pages 11, 122.

Again he says: "We have abundant reason to be convinced that the spirit of trade which pervades these states is not to be restrained. It behooves us, then, to establish just principles, and this cannot, any more than other matters of *national* concern, be done by *thirteen heads*, differently constructed and organized. *The necessity, therefore of a controlling power*, is obvious, and why it should be withheld is beyond my comprehension. *Ibid.*, pp. 140, 141, and 160–162, 183.

Mr. Madison says: "Let the National government be armed with a *positive and complete* authority in all cases where uniform *measures are necessary*, as in *trade*," etc. Madison's Papers, Vol. 2, pp. 632 and 711, and Federalist, 211 and 201.

McMaster, in his "History of the People of the United States," p. 206, in speaking of one phase of this question of commerce in 1784, says: "Congress had no power to regulate commerce; but each state, left to itself, ordered *its own trade in its own way, and the way of one state was always different from the way of*

another. The commerce which Massachusetts found it to her interest to encourage, Virginia found it to hers to restrict. New York would not protect the trade in indigo and pitch. South Carolina cared nothing for the success of the fur interests. New England derived great revenues from lumber, oil and potashes, Pennsylvania from corn and grain, and were in nowise interested in the trade of their neighbors. Articles which Connecticut and New Jersey excluded from their ports by heavy tonnage duties, entered New York with scarcely any other charges than light money."

This absolute necessity that the general government, which looked to the interest of all, should control all the commerce of the country, was not only one of the causes which led to the adoption of our present Constitution, but was the chief, and, indeed, the only cause which led to the calling of the convention at Annapolis, which, in turn resulted in the call for a constitutional convention at Philadelphia.

On the 30th of November, 1785, the House of Delegates of Virginia adopted a preamble and resolutions on this subject, the preamble of which is as follows: "Whereas, the relative situation of the United States has been found *on trial to require uniformity in their commercial regulations* as the only effectual policy for obtaining in the ports of foreign nations a stipulation of privileges, reciprocal to those enjoyed by the subjects of such nations in the ports of the United States, for preventing animosities which can not fail to arise among the several states, from the interference of *separate and partial regulations*; and, whereas, such uniformity can be best concerted and carried into effect by the Federal councils which, having been instituted for *the purpose of managing the interests of the*

states, in cases which can not be so well provided for by measures individually pursued, ought to be invested with authority in this case as being within the *reason and policy of their institution.*" Then follow resolutions which show, that, while the necessity was great, they were not quite prepared to eliminate, from the reserved power of the states, the whole subject of commerce.

Afterward these resolutions were reconsidered, and, on January 21, 1786, the General Assembly of Virginia adopted the plan of appointing commissioners to meet with such commissioners as the other states might appoint, to consider "the trade of the United States; to examine the relative situation and trade of the states; to consider how far an uniform system in their commercial relations may be necessary to their common interest and their permanent harmony, and to report to the several states such an act relative to this *great object* as when unanimously ratified by them, will enable the United States in Congress assembled effectively to provide for the same."

Elliot's Debates, Vol. 1. pp. 148–9.
Madison's Papers, Vol. 2, p. 695.

Five of the states sent commissioners to this Convention at Annapolis, in September, 1786. New Jersey empowered her commissioners to consider not only "commerce" but also "other important matters;" and, as the commissioners from the other states were authorized to deal with "commerce" only, the delegates, after consultation agreed to recommend to each state that they all send delegates to a Convention in Philadelphia, in May, 1787, "to devise such further provisions as shall appear to them necessary to render the Constitution of the Federal government *adequate to the exigencies of the Union.*"

Elliott's Debates, Vol. 1, p. 151.

When this Convention, which formed our present Constitution, met, there were many tentative propositions, in the shape of resolutions and drafts of the proposed Constitution submitted; and it is a pregnant fact that, in every one of these, the whole power over commerce was to be lodged in the National Government.

Mr. Randolph's resolutions were the first submitted; in the sixth of which it is affirmed "that the National Legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and, *moreover, to legislate in all cases to which the separate states are incompetent or in which the harmony of the United States may be interrupted by the exercise of such individual legislation.*"

Ibid., p. 180.

Madison's papers, Vol. 2, p. 732.

Mr. Pinckney's draft provided that Congress shall have power "to regulate commerce with all nations, and among the several states;" but such regulations shall require the consent of two-thirds of the members of each house.

Elliott's Debates, Vol. 1, pp. 184–5.

Mr. Patterson's resolutions gave the United States the power "to pass acts for the regulation of trade and commerce, as well well with foreign nations as with each other."

Ibid., p. 209.

The committee of the whole adopted literally that part of Mr. Randolph's resolution quoted above.

Ibid., p. 215.

On July 17, 1787, Mr. Sherman moved, as a substitute for that part of Mr. Randolph's resolution giving Congress full power over commerce, the following:

"To make laws binding on the people of the United States in all cases which may concern the common interests of the Union, *but not to interfere with the government of the individual states* in any matters of *internal police*, which respect the government of such states only, and wherein the general welfare of the United States is not concerned."

This was lost by a vote of eight states to two. *Ibid.*, p. 238.

Whereupon, on motion of Mr. Bedford, the second clause of said sixth resolution was amended so as to read, "and moreover, to legislate in *all* cases for the general interests of the Union; and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation," and, as thus amended, it was adopted by a vote of eight states to two. *Ibid.*, 239.

The Committee of Detail, to whom was referred what had already been done, reported back this last resolution on the 26th of July, 1787, *without change*. *Ibid.*, 252. Attention is particularly called to this resolution, as it was the deliberate judgment of the Constitutional Convention as to the meaning of the words that were, on the 6th of August, made a part of the draft of the Constitution, to wit: "To regulate commerce with foreign nations and among the several states" (*Ibid.*, 258); and, on August 16, 1787, formally adopted as part of the Constitution. *Ibid.*, 277.

This committee, to whom the resolution was referred, not for the purpose of suggesting any change, but to incorporate the mind of the Convention into a draft of a Constitution, report the above clause as the equivalent

in meaning of Mr. Randolph's resolution, as amended on motion of Mr. Bedford, and here is a contemporaneous construction of the meaning of this clause by the convention which adopted it.

On the 18th of August, certain additional powers were suggested, among which was the power "to regulate affairs with the Indian tribes, as well within as without the limits of the United States," and "to regulate stages on post roads" (*Ibid.*, 278), which were referred to a detail committee of five, who, on August 22d, recommended that the words "and with the Indians within the limits of any state not subject to the laws thereof," be added. (*Ibid.*, 288.)

On September 5th, the committee of eleven recommended the addition to the commerce clause of the words "and with the Indian tribes," dropping out the words "*within the limits of any state not subject to the laws thereof.*" (*Ibid.*, 312.) On August 29th, it was moved again, for the third time, that no act regulating commerce should be passed, "without the assent of two-thirds of the members of each house" of Congress, and it was again defeated. (*Ibid.*, 308.)

There is still another construction by this convention of what the words used as to regulating commerce mean; for, when the constitution has been completed, a letter of the members of this constitutional convention was sent with the final draft to Congress and to the several states, and, what is more, this letter was adopted, paragraph by paragraph.

It says, among other things, that "the friends of our country have long seen, and desired that the power of making war, peace and treaties; that of coining money

and *regulating commerce* and the correspondent executive and judicial authorities, shall be *fully* and *effectually vested in the general government of the union.* (*Ibid.*, 336.)

In the acts of the several states, ratifying this constitution, the States of Massachusetts, New Hampshire and Rhode Island suggested that among other necessary amendments one should be adopted providing "that Congress erect no company with exclusive advantages of commerce;" but no amendment to the constitution limiting the power of Congress over commerce, either as to foreign nations or among the states, has ever been adopted except that in regulating commerce Congress shall give no preference to the ports of one state over the ports of another by any regulation of commerce. Art. 1, Sec. 9, Sub. Sec. 6.

The history of this country for nine years under the articles of confederation, when the states had considerable power to regulate commerce, was such an exhibition of unfitness and weakness, of jealousies, retaliations and bitterness, that the then recent knitting of the states together in the common defense was unraveled and forgotten. The whole commerce, domestic and foreign, was being ruined, and an open war between the states seemed inevitable.

At that time the whole population of the United States was about 3,000,000.

McMaster's People of the United States, pp. 8 and 9.
DeBow, Vol. 3, p. 404.
Jefferson's Correspondence, Vol. 1, p. 424.

Now it is over 60,000,000.

The whole value of exports and imports in 1784 was about $4,000,000.

McMaster, 206.

Now they are so immense that figures fail to convey any true idea of their magnitude.

At that time commerce among the states was slow, tedious and utterly insignificant. Now it is rapid, immense, incalculable. At that time foreign commerce as compared with interstate commerce, was immense —now it is a mere bagatelle.

Then they had few markets, little competition and no railroads. Now the whole country is dotted with markets, and cobwebbed with railroads and telegraph lines, and competition is so great that the slightest advantage of one market over another is known, and utilized to the upbuilding of the one and the downfall of the other. The smallest interference with commerce is felt all over the Union. The rise or fall of one-sixteenth of one cent in any article of commerce in New York or Liverpool is instantaneously felt and acted on in every nook and cornor of the United States. The diversity or value of the productions of the thirteen original states then is not to be compared with the diversity or value of the products of the forty-five states now.

The means of conveyance from point of production to the market then consisted of bad country roads, or, where it was reached by water, the voyage was as slow as it was dangerous, and if it was folly *then* for each state to attempt to regulate its own trade or commerce among the states, what would be said of such an attempt *now?*

VII.

This brings us to our last point on this head, and that is, that in the very *nature of things*, in a dual government like ours, with a national and also state governments covering the same territory, it is *necessary* that the national government shall regulate commerce, whether foreign or domestic.

One of the inherent difficulties in attempting the joint or concurrent regulation of the commerce among the people of the several states, or the regulation of separate parts of it by Congress and the forty-five several states, is found in the fact that the commerce of the United States is in itself practically *indivisible*.

We are one people. Our intercourse and traffic with each other is essential to our homogeneity, not to say our existence, as a nation. In this vast territory of ours the diversity of climate and production, the navigable waters, the network of over 170,000 miles of through railways, the cobweb of telegraph and telephone lines, the common dangers of the past, the common hopes of the future, the ties of family, the ramifications of business, the demand and supply, the laws of trade, the rush of competition—not one of them all recognize the artificial boundaries known as state lines. Nature has given us the greatest waterways on earth, parts of which run through a single state, as the Mississippi river through Louisiana, near its mouth, with its navigable feeders flowing between or through or into about one-half of all the states of the union, the Hudson, the Potomac, the James, the Ohio, the Missouri, the Sacramento, the Columbia, the great lakes, the bays, the canals, in short, the great system of

waterways, whose bosoms are white with the sails of commerce, the 513 steam railways throbbing with the pulse life of intercourse among the people of the several states—one single one of which, to wit: this appellant, as far back as 1883, carried one mile 113,332,918 passengers, and 1,209,265,334,000 pounds of freight. And in 1894 carried the same distance 317,711,176 passengers and 1,460,551,031 *tons* of freight.

How shall we divide the commerce of the United States? Where shall the line be drawn? Who can put his finger on the pulse, and as the life-blood of this country rushes past into this grand system of arteries and veins, allot the due proportion of control to each of these arbitrary divisions of our common country?

Shall the distinction and division of this indivisible unity of commerce be based on classification of the materials of which that part of commerce known as freight traffic is composed? Shall we say *this* is in its nature or use foreign, *that* is domestic, and another may be either? Where is the practical test? Take a concrete case—cotton raised in Tennessee. It is ginned and bailed; it is carried from the gin to local market and sold; from local market of the neighborhood it is carried to Memphis and sold, all within the state, and yet it is an article useless unless manufactured, and there are no manufactories in the state. From the time it begins to move it is an article of the world's commerce. What class should it be put in? It goes from gin to local market, thence to Memphis, thence to New Orleans, thence to Liverpool thence to factory without ever being unpacked. So, in a measure, it may be said of tobacco, whisky, lumber, machinery. Where is the practical test?

But suppose we try the test of state lines, and attempt to class and divide the commerce of our common country by these arbitrary state lines. What is that part of commerce that may be practically declared to be internal or domestic state commerce? What is interstate commerce? What is foreign? How can the line be drawn?

It has been claimed that every article of commerce that moves over or through any part of the state is the domestic commerce of that state, and that so long as an article is moving inside her state lines, it is domestic, and she may regulate it while within her boundaries. But if so of each state, where is interstate or foreign commerce? For *all* the commerce of this country goes from or is received within the several states and territories, and when it is outside the boundaries of the several states, it is also outside the boundaries of the United States. What is there for Congress to regulate? Shall the carrier of passengers be governed by different and conflicting regulations in each state, and be compelled to readjust its passengers and change its uniform rules of carriage on reaching each state line?

Shall the intention of the shipper or the first destination of the article shipped, or the residence of the owner or consignee, or the final destination, or the nature of the article or its uses, or where produced, be the test? Who is able, in the rush and volume, the hurrying to and fro, of this inconceivable number, variety and mass of commerce, in all stages, shapes and conditions, to separate, to define, to enforce? It is a practical impossibility.

But, suppose the test and basis were satisfactorily settled as to railways, so far as any part of them lies in

one state; what about those parts outside of the particular state? What about the competing waterways? What about railways reaching the same distributing centers, which do not pass through such state? What about competing railroads and waterways which reach other competing commercial centers? Can the state also control *them* so as to produce that uniformity so absolutely necessary to the regulation of commerce? Nay; leaving these other channels of commerce, what will become of the railroad which runs through several states, as nearly all of them do? They must be stopped at each state line, inspected, overhauled, regulated, and there adopt the regulations of another state.

One requires all classes, colors and conditions of men, as in Louisiana, to be received together into the sleeping-car; another directs or allows the separation, and the traveling public in the latter demand a separation, the train must stop at the state line, whether night or day, and readjust its passengers. The ship clearing from New Orleans for Liverpool must receive the negro, the Chinese, the Indian into the ladies' cabin, and so carry them sixty miles down the river, in Louisiana, until it reaches the open sea. The railroad company in Tennessee may ship cotton on a flat-car for New Orleans; in Mississippi it must be changed to a box-car; in Louisiana it may be something else. Where is commerce in all this confusion of masters?

It may be asked: May not the separate states enter into agreements with each other and thus arrive at the necessary uniformity? This would meet one of the objections. But if such harmony were possible between separate state legislatures, no one of which represents the whole people nor has power over the whole territory, yet

the constitution of the United States says that "no state shall, without the consent of Congress, * * * enter into any agreement or compact with another state or with a foreign power."

Or, take the case at bar; it is manifestly necessary in modern commerce that there shall be through trains as well as local—also fast mail trains, and limited express trains. If any one state may lawfully require every one of such interstate trains to stop at every little station they pass in such state, and give time and opportunity for passengers to get on at each station in the state, or have power to do what is attempted to be done in this case, to wit: require such interstate train to go miles away to a depot, which is not on the direct through line, what would become of such rapid transit among the states? or with interstate or foreign commerce?

And if each state, in order to unreasonably force the building up of its towns at the expense of the towns of her sister states, and especially of general commerce, puts in force such regulations of such interstate trains, it is apparent that interstate commerce would be directly and materially regulated, if not practically destroyed.

The power to so regulate involves the power to destroy. And when it comes to the question of power, the explicit words of the Federal constitution are that *Congress* shall have power "to regulate commerce with foreign nations, among the several states, and with the Indian tribes," and if Congress possesses this power it cannot also be possessed by another at the same time.

Look at map a of the United States. See the great channels of through transportation, both water and inland. The trunk lines of railways projected, chartered

and constructed *as interstate* railroads, and as such dedicated by the concurrent action of the several states to public commerce. See the inconceivable mass of commerce, rushing with the speed of the wind, along the lines of this great system to every nook and corner of the land. Observe how it equalizes productions; banishes famine, destroys distance, and makes every citizen cosmopolitan in his education and wants, and brings each so close to the other that the ideals, the sympathies and tastes, the refinement and culture, the labors, the laws, the patriotism of the one are shared by the other, under the benign rule of a Federal government, which "overshadows all and rests unequally on none."

This rapidity of transportation by railways has become a necessity in the commercial business of the world, and in this country it is so interwoven with its financial and commercial existence, that any hindrance by separate states to the freeness of intercourse between the people of one or all of the states, and the regulation or obstruction by separate states of the rush and volume of this vast commerce of the nation, or, as the constitution expresses it, this "Commerce among the states," is a violation of the fundamental structure of our government, and *a return to the jealousies and weakness of the Articles of Confederation.*

The great Chief Justice in 1819, said: "If any one proposition could command the universal assent of mankind, we might expect it would be this: that the government of the Union, though limited in its powers, is supreme within the sphere of its action. This would seem to result necessarily from its nature. It is the government of all. Its powers are delegated by all. It represents all and acts for all. Though one state may be

willing to control its operations, no state is willing to allow others to control them." *McCulloch* v. *Maryland*, 4 Wheaton, 405. "In the Legislature of the Union, alone, all are represented. The Legislature of the Union, alone, can be trusted with the power of controlling measures which concern all, in the confidence that it will not be abused." Page 431. And in the leading case of *Brown* v. *Maryland*, 12 Wheaton, p. 447, the same great judge, in speaking of the attempted regulation of commerce in that case, by the state, says: "Such a state of things would break up commerce. It will not meet this argument to say that this state of things will never be produced; that the good sense of the states is a sufficient security against it. The constitution has not confided this subject to that good sense. It is placed elsewhere. The question is, where does the power reside? Not, how far will it be probably abused? The power claimed by the state, is in its nature, in conflict with that given to Congress; and the greater or less extent in which it may be exercised, does not enter into the inquiry concerning its existence." Page 447. And so on page 439 he announces the proposition that "Questions of power do not depend on the degree to which it may be exercised. If it be exercised at all, it must be exercised at the will of those in whose hands it is placed."

And in 1888 this court declares, in *Stoughtenberg* v. *Heuneck*, 129 U. S., 149, that Congress "could not have delegated" even to the District of Columbia, power to pass an Act which required commercial agents selling goods by samples in said district to take out a license; because, it would be the delegation by Congress to that extent of the power to regulate commerce, which by the federal compact, is vested in Congress.

VIII.

IS AN INTERSTATE THROUGH LINE IN FACT.

Appellant, by uniting part of the railroad built by it under its Illinois charter with parts of railroads built by other railroad companies in Kentucky, Tennessee, Mississippi and Louisiana, has established, under authority of the laws of the five states, and under precedent authority of a law of the United States, a through line from Chicago, Illinois, to New Orleans, Louisiana, which is operated and controlled by one management, and engaged chiefly in interstate and foreign commerce (Rec., 20, 22, 95; Exhibit, page 48), and is the shortest through line between the Great Lakes and the Gulf of Mexico.

No part of the railroads built by appellant or the other railroad companies in any of the states above named has been abandoned. On the contrary, full and adequate service is maintained on those parts of each of them which are not used, nor situated so they can be used, as a part of the interstate line aforesaid. (Rec., 19.)

The contention in this case by appellee is not that full and adequate service is not rendered on parts of the original railroad built in Illinois, which are not so situated as to be made parts of the through and direct interstate line; but that under a statute of Illinois, every passenger train between Chicago and New Orleans, no matter how many may be put on, whether limited or fast mail or other through train, shall be run *away and off* from the direct interstate line, aforesaid, to a terminus of one of said roads, near the end of a point of land where the Ohio and Mississippi rivers unite, some miles away from

the direct interstate line contemplated by Congress in the act approved September 20, 1850. And that every one of said through trains shall be so run down to said terminus, and returned therefrom to the said interstate line, a distance of over seven miles. And that each of said passenger and mail trains shall stop at said terminus a sufficient time to put off and take on passengers; notwithstanding the fact that full and adequate service in other passenger, mail and freight trains is given to and from said terminus, and notwithstanding the fact that, besides full and adequate service by other trains to said terminus, there were trains running from and to said terminus to connect with each of the through trains aforesaid in said direct interstate line.

In short, appellee insists that no through train shall be run between Chicago and New Orleans—on said direct interstate railroad track—without stopping at the approach of the railroad bridge which crosses the Ohio river, some three and one-half miles from the old terminus in Cairo, and turning off and away from said direct interstate line, run the whole through train bodily down to said terminus and back to the direct line, before proceeding on its way north or south.

The appellant insists that its right to run through interstate trains over part of its own line and part of the railroad tracks of other lines which make a direct interstate line, is a right which it had by charter contract; and that a state law, passed long after said charter contract was entered into, which requires *all* of its passenger trains to run to any one of its termini in Illinois, and denies its right to send said interstate trains over part of its railroad and parts of other railroads, on such direct in-

terstate line, is a law impairing the obligation of said charter contract, and in violation of Art. 1, Sec. 10, of the Constitution of the United States; and that the said state statute, as construed by the Supreme court of Illinois in this case, is in violation of Art. 1, Sec. 8, of the Constitution of the United States, in that it is a material resumption by the state of the power to regulate commerce among the states, and with foreign nations, which, by the Federal Constitution, was delegated exclusively to Congress, and surrendered by the states; and in that it is practically putting unreasonable burdens upon commerce among the states and with foreign nations, and unreasonable hindrances to the free course thereof; not only without the consent of Congress, but in violation of the manifest purpose of Congress in passing the act approved September 20, 1850, and the grant of public lands thereby made for the purpose of aiding in the construction of an interstate railroad from the lakes to the gulf.

IX.

WAS INTENDED BY CONGRESS AND BY EACH OF THE STATES AS A THROUGH INTERSTATE TRUNK LINE.

The Illinois Central Railroad was in its origin intended to be a part of an interstate railroad, and its connection with a railroad running southwardly from the Ohio river, was contemplated by Congress at the time that it passed the act of September 20, 1850, and by the five states of Louisiana, Mississippi, Tennessee, Kentucky and Illinois, at the time they severally chartered railroad companies to build the different parts of this interstate trunk line of railroad.

Originated and fostered by the United States Government as an interstate railroad of national concern.

In 1848 the vast territory of the United States from Lake Michigan to the Gulf of Mexico was without the means of rapid or continuous transportation, and it was a matter of national importance that there should be a "great national thoroughfare" connecting the North and South, so as to secure safe, rapid and continuous transportation and intercommunication among the states.

Prior to 1848, the national government had secured the construction of the Illinois and Michigan canal. And in 1848, Mr. Douglas introduced a bill in the Senate of the United States, the purpose of which was declared to be the building of a railroad "to connect the upper and lower Mississippi with the great lakes at Chicago." On May 3, 1848, said bill passed in the Senate of the United States. In April and May, 1850, this matter was again under discussion in Congress, and became a law by the

approval of the President, on September 20, 1850. A reference to the Congressional Globe of the dates above mentioned, will show in great fullness the grounds upon which this action of the General Government was based. It was advocated by Mr. Clay as being for the sake of "*the commerce and travel and intercourse between the people of this Great Republic, which, the more the facilities of intercommunication are augmented, becomes the more harmonious and homogeneous in all its parts.*"

It was supported, after a full discussion, upon the express ground that it was, as Mr. Seward expressed it, "*a great national enterprise*, a great national thoroughfare;" and as such, had the warm support of Mr. Cass, Mr. King, Mr. Benton, and many others of the far-seeing statesmen of that day.

Its parts were recognized and aided by the several states as an interstate railroad, a grand trunk line of commerce among the states.

On April 6, 1851, a convention of the people of the Mississippi valley at New Orleans pledged its members to a "very liberal aid in the construction of said railroad," and by resolutions adopted, "earnestly solicited" the several states to aid in the establishment of this interstate railroad between the Gulf of Mexico and the Great Northern lakes.

LOUISIANA.

The State of Louisiana granted a charter under the name of the New Orleans, Jackson and Great Northern Railroad Company; and it was declared in the second section of the articles of organization that "the road is to be made on such a scale as shall serve for the main trunk of a *continuous line of communication* between New Orleans and the northern and western portions of the confederacy;" and by Section 6 of the Act, was empowered to buy or accept "any railroad company within or without the limits of this state, whenever the route of said railroad company shall form a continuous line with that of the New Orleans, Jackson and Great Northern Railroad."

MISSISSIPPI.

The State of Mississippi, by the act of March 11, 1852, declares that the construction of said New Orleans, Jackson and Great Northern Railroad "from the city of New Orleans, running through the State of Mississippi * * * is deemed a work of great public importance, and is in strict accordance with the true policy and interest of our state, and should be encouraged by legislative sanction," and requires the governor, upon the organization of said company in Louisiana, to issue his proclamation to the people of Mississippi "declaring said company capable of entering on the territory of Mississippi * * * "for the purpose of constructing and extending their works." And by Section 3 of said Act authorizes the extension of said road "through this state."

By act approved March 2, 1854, the proceeds of lands granted by Congress to the State of Mississippi are in part

given to the said railroad to aid in its construction; a part having been given to the Mobile and Ohio Railroad for a similar purpose, and part to the Mississippi Central R. R. Co. All of which corporations were created for the purpose of connecting the Gulf of Mexico by rail with the North.

Tennessee.

The State of Tennessee, by act of February 25, 1852, (Acts 1851–2, page 314) grants the said New Orleans, Jackson and Great Northern Railroad Company the right of way through the State of Tennessee; and as a preamble and part of said act, declares as follows:

"Whereas, by resolutions adopted by a railroad convention begun and held on the 6th of April, A. D. 1851, at the city of New Orleans, in the State of Louisiana, it appears to this General Assembly that the rights of way and charter for a railroad to extend northward from said city of New Orleans through a part of the states of Louisiana, Mississippi, Tennessee and Kentucky to the Ohio river, having in view to connect the same with the proposed great North and South Central Railroad of Illinois, are earnestly solicited from the legislatures of the various states through which it is to pass; and also in which said resolutions the city of New Orleans did therein, through its representatives, pledge itself for a very liberal aid in the construction of said railroad, and whereas it is deemed a matter of vital importance to this state that a direct communication by railroad to the Gulf of Mexico and the Great Northern Lakes be established: Be it enacted," etc.

KENTUCKY.

The State of Kentucky granted the right of extension to the two railroads—the one from Mobile, Alabama, and the other from New Orleans, Louisiana, to the Ohio River, and by proper acts of the States of Louisiana, Mississippi, Tennessee and Kentucky, the railroad from New Orleans to the Ohio River was consolidated under one management, under the name of the Chicago, St. Louis and New Orleans Railroad Company. And the State of Kentucky, (which extends across the Ohio River to the low water line on the Illinois shore) by act approved March 29, 1886, authorized the Chicago, St. Louis and New Orleans Railroad Company, aforesaid, to build a bridge across the Ohio River which should conform in its height and dimensions to the conditions and limitations of an act of Congress entitled "An act to authorize the construction of bridges across the Ohio River, and to prescribe the dimensions of the same," approved December 17, 1872, and an act supplementary thereto, approved February 14, 1883. And said bridge was constructed by said last named railroad company; and thus was completed the north and south line from New Orleans, Louisiana, to the north shore or bank of the Ohio River. (Rec., 23.)

These acts of Congress required that such bridge should cross at "right angles to the current" of the river, with a "clear height of fifty-three feet above local highest water, measured to the lowest part of the channel span." And said bridge was located as near to Cairo as was possible. (Rec., 12.)

Illinois.

The State of Illinois, by act, approved February 17, 1851, page 192, accepted the act of Congress, approved September 20, 1850, which was entitled an "Act granting the right of way and making a grant of land to the states of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile," and in said acceptance provided that "all conditions expressed in said act are hereby agreed to and made obligatory on the State of Illinois." The act provided for the construction of a railroad "from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers with a branch of the same to Chicago" and another to Dubuque. Section 4 thereof prohibited the use of the lands granted, for any other purpose, and is as follows: "Sec. 4. And be it further enacted that the said lands hereby granted to the states shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other. And the said railroad and branches shall be and remain a public highway for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States." Section 6 provided "That the United States mail shall at all times be transported on the said railroad under the direction of the post-office department, at such price as the Congress may by law direct." And section 7 is as follows: "*That in order to the continuation of said Central Railroad* from the mouth of the Ohio river to the city of Mobile, all the rights, privileges and liabilities hereinbefore conferred on the State of Illinois shall

be granted to the states of Alabama and Mississippi, respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio river; and that public lands of the United States, to the same extent, in proportion to the length of the road, on the same terms, limitations and restrictions in every respect, shall be and is hereby granted to the said states of Alabama and Mississippi, respectively."

The State of Illinois, in order to carry out the provisions of the act of Congress aforesaid, passed the act of February 10, 1851, incorporating appellant, and by section 2 thereof makes the lines of the railroad, therein authorized to be built, to begin as Congress had provided, at the southern terminus of the Illinois and Michigan Canal, and to extend as provided in said act of Congress.

By section 10 of said charter said company was given power to construct said railroad over or across any stream of water or watercourse which the route of its railroad shall intersect.

By section 11 appellant was authorized, when it connected with any other line of railroad then in process of construction, to make all such connections, " and other conveniences necessary to futher the objects of such connection," and " connections made with the road authorized to be built by this act shall be made, and facilities in the transportation of freight and passengers, and interchange of cars afforded by each over the respective roads," etc.

By section 15 it is declared that " For the purpose of securing the construction of said road and branches, the

right of way, and all the lands which may be selected along the lines of said road and branches within this state, under the grant made by the government of the United States to the State of Illinois, by virtue of 'An Act granting the right of way and making a grant of land to the States of Illinois, Mississippi and Alabama in aid of the construction of a railroad from Chicago to Mobile," are hereby ceded and granted to said corporation. And upon the completion of said road, 'The governor of the State of Illinois shall, in his official capacity, and in behalf of the State of Illinois, and under the great seal thereof, execute and deliver to the said company a deed in fee simple of all of said lands, granted by the government of the United States under the act aforesaid'; and requires security from said company 'for the faithful application of all money or property arising from the sale of lands * * * to the constructing, completing, equipping and furnishing of said road and branches in accordance with the terms of this act and *said act of Congress.*"

X.

EXPRESS AUTHORITY TO CONNECT WITH OTHER RAILROADS AND MAKE UNINTERRUPTED THOROUGHFARE OR THROUGH LINE.

The State of Illinois had, by the general corporation act of 1839, approved November 5, by sections 5, 6 and 45 thereof, authorized all existing railroad companies and those organized thereunder to construct such railroad across streams of water, and to "cross, intersect, join and unite its railroad with any other railroad before constructed, at any point on its route." And by an amendatory act, approved February 12, 1853, all railroad companies whose lines connect are empowered to make contracts or arrangements "with each other for the use of each other's engines, machinery or cars, as also for the mutual transportation of material, merchandise and passengers along the lines of each other's roads, upon such terms as may be mutually agreed upon between any such corporations. And by act approved February 12, 1855 (Private Laws, page 304), entited "An act to enable railroad companies to enter into operative contracts and to borrow money," full authority is given all railroad companies of Illinois "to make such contracts with each other and with railroad corporations of other states for leasing or running their roads, or any part thereof." And, by section 2, the "right of connecting with each other and with railroads of other states," on such terms as may be agreed on between such companies. And by an act approved February 17, 1857 (Private Acts, page 1,175), every railroad company incorporated under the laws of Illinois is "authorized to construct their road

across any stream of water or watercouse by such bridge or bridges, viaduct or viaducts as may be useful or necessary to enable them to unite with any other road, whether within or *without this state.*" And by act of 1867, approved February 25th (page 174), entitled "An act to facilitate travel and transportation"—section 1—"railroads terminating or to terminate at any point on any line of continuous railroad thoroughfare where there now is or shall be a *railroad bridge* for crossing of passengers and freight in cars over the same, as part of such thoroughfare, *shall* make convenient connections of such railroads, so that by reason of said railroads and bridge there shall be *uninterrupted communication over such railroads and bridge as public thoroughfares.* But by such connections no corporate rights shall be impaired."

The acts of Illinois approved June 14, 1883, and June 30, 1885, and an act approved June 17, 1893, entitled "An act authorizing railroad companies in consolidating, so as to form an *interstate line,*" etc., authorized consolidation for such purpose. And by the act of 1885, an Illinois railroad company whose line "connects at the boundary line of this state with a railroad in another state," is authorized to purchase and hold in fee simple or otherwise such road in another state.

The United States government also by act approved June 15, 1866, entitled "An act to facilitate commercial, postal and military communication *among* the several states," authorizes all railroads "to connect with roads of other states so as to form continuous lines for the transportation of the same to place of destination."

14 U. S. Stat. at Large, Chap. 124, page 66.

It thus appears that this trunk line of railroad from Chicago to New Orleans is and was at the time this suit was brought not only *in fact* an interstate railroad crossing five states, and chiefly engaged in interstate and foreign commerce, but, also, that the scheme of a trunk line was *originated* by Congress, and large amounts of the public lands were given by the United States *for the specific purpose* of securing the construction and operation of an *interstate railroad from the lakes to the Gulf*, for national purposes and interstate commerce, and that the five states granted charters for the building of the several parts thereof as an interstate through railroad.

XI.

The fact that Congress did not directly grant a charter to the railroad companies who built this line from Chicago to New Orleans, in no way obscures the fact that it *is* an interstate railroad, nor the fact that it is invested with powers of a *national origin*, and subjected to duties of a *national character*; for, while Congress did not attempt of itself to create this railroad corporation, Congress did by its land grant furnish much of the means necessary to construct this interstate railroad, and prohibited the use of any of said lands by the state legislatures *for any other purpose*; expressly declaring that said railroad "shall be and remain a public highway for the use of the government of the United States, *free* from toll or other charge upon the transportation of any property or troops of the United States," and that "United States mail shall always be transported on the said railroad, under the direction of the post-office department, at such price as the Congress may by law direct."

The State of Illinois accepted the trust, and agreed that all the conditions expressed in said act of Congress "should be obligatory on the State of Illinois." And no one of the states can now transform a corporation so originated, directed and aided by national legislation for national purposes and interstate commerce, into one of local character, nor by hostile legislation hamper and restrict such company in the management and control of its interstate railroad to such narrow or selfish views of the policy of a single state, as she may apply to a railroad entirely within such state, which was never intended as an interstate railroad and has no connection with any line outside the state's limits, and does no interstate or foreign business.

It is true that under the Act of Congress of September 20, 1850, these several states each for herself might have undertaken the construction of that part of this interstate line of railroad which should lay within her boundaries. But even if each of said states, after accepting said lands, and agreeing to the terms imposed by said act of Congress, had so built the part of such interstate railroad within her borders, and operated it, still the fact and law would remain that no one of these states could change such a railroad into one of local character, nor unreasonably hinder its national uses, nor its conduct of interstate or foreign business.

It may be that a state may decline to authorize or allow the construction or opening of artificial channels of commerce within her borders, and that where she grants such authority she may prohibit its connection with any other channel of commerce extending beyond her boundary, or reserve the power to so limit its uses, and afterwards exercise the power so reserved; but when she

has authorized their construction, and authorized their connection with such channels outside her borders and with the systems of public channels of commerce among the states and with foreign nations, and dedicated them to the uses of public commerce, she may not, so long as such dedication exists, interfere therewith by imposts on the things carried, nor otherwise obstruct or hinder the flow of commerce among the states and with foreign nations through such channels so connected, authorized and dedicated.

And if this be true, so much the more is it true that when these states accepted the act of Congress, and instead of constructing and operating this interstate railroad themselves, chose rather to put the risks of the investment, as well as the burdens of the law of Congress, upon companies which were incorporated for that purpose, such companies and their stockholders and bondholders who invested their money in such interstate railroad, may well demand the protection of this court against any law of either of said states which practically violates the law of the United States aforesaid, or denies the national purpose or interstate character of the road, and without any pretense that the public health, morals or safety are injuriously affected by the way appellant operates its interstate through trains, selfishly regulates such commerce among the states and with foreign nations, as is attempted to be done by the mandamus in this cause.

The right to make said railroad "a public highway for the use of the government of the United States, *free* from toll or other charge upon the transportation of any property or troops of the United States," and to compel the transportation of the United States mail thereon "under

the direction of the post-office department, at such price as Congress may by law direct," is expressly declared by the Act of September 20, 1850, and fastened upon this railroad. And if the corresponding right of those who built said interstate railroad, to make it in fact, as Congress provided it should be—an interstate railroad—is denied by the several states, and in the face of said Act of Congress, its character is changed to that of several local state railroads, and thus its interstate and foreign business are unreasonably hindered or destroyed, a result will be reached which shocks the conscience by its injustice and bad faith.

It is not contended that the forcing this interstate railroad to run all of its interstate trains seven miles out of the direct through line down the Ohio levee to Cairo will utterly destroy its interstate and foreign business; though it will be a material, serious and utterly unreasonable obstruction and injury thereto. But it is contended that if the state has the right to do it in this case, she has the right to require every train destined over interstate railroads to be carried past and away from every junctional point of railroads constituting such interstate line, to the terminus of the initial line, or to the depot at the county seat. And it is a matter of common knowledge that in the city of Chicago, for instance, one of the termini of appellant, its old depot, is at Lake street, and that it runs within the corporate limits of Chicago a distance of over seventeen miles, and that within that seventeen miles, many—say eight—railroads cross, which with it form interstate lines, and do interstate and foreign business; and if in this case it may be compelled to run all its interstate through trains down to the depot at Cairo, it may be compelled to run every one of its trains past

the junctional points in Chicago seventeen miles down to the Lake street depot and back, thirty-four miles out of their way. And it is manifest that if Illinois may do this, so may each of the other four states; and, that similar action by each of these states would utterly destroy the interstate character of this trunk line, as well as its interstate and foreign business, and practically bankrupt the whole.

It is also manifest that if the states have this power, they may require every one of such interstate trains to stop at every depot, and every one of them to take on passengers at every depot—even in cases like the one at bar where full, adequate and complete service to each of said depots would be given by stopping part of such trains —and where the stopping of all would destroy the interstate commerce of such railroad, and practically make it a local road.

XII.

Let us look at this a little closer.

THE ACT IS AS FOLLOWS:

STOP AT STATIONS.

Section 25. Time of stop at stations.

"An act to amend section twenty-five of 'An Act in relation to fencing and operating railroads,' approved March 31, 1874, in force July 1, 1874. Approved May 29, 1879. In force July 1, 1879.

Section 1. Be it enacted by the people of the state of Illinois, represented in the General Assembly, that section twenty-five of an act entitled 'An Act in relation to fencing and operating railroads,' approved March 31, 1874, in force July 1, 1874, be amended so as to read as follows:

Section 25. 'Every railroad corporation shall cause

its passenger trains to stop upon its arrival at each station, advertised by such corporation as a place for receiving and discharging passengers, upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: Provided all regular passenger trains shall stop a sufficient length of time at the railroad stations of county seats, to receive and let off passengers with safety.

Approved May 29, 1879."

This statute of Illinois, as construed by her Supreme court, involves the power to deal with an interstate railroad precisely as if it were a short line, entirely within such single state, which did not connect with nor have the right to connect with any railroad or other carrier, and had never been dedicated by the state for the general purposes of commerce.

1. By the said Act, as construed by the Supreme court of Illinois in this case, is assumed the right to stop all regular passenger trains, whether interstate, limited, fast mail or not, on the way to destination, without reference to public health, public safety or public morals, wherever she pleases. If she has this power, she may require every interstate train to stop at every station in the state, or at every dirt road, or house along the railroad in the state.

2. To arbitrarily stop every one of such regular interstate passenger trains, whether limited or fast mail, at county seats, notwithstanding the fact that full, adequate and complete service is rendered to said county seat by other trains.

3. To require every one of such trains—no matter how many are put on—*to take on and put off passengers* at every one of such stations.

4. To compel every one of such interstate, limited

and fast mail trains to leave the through line at a point *outside of the boundaries of any county seat*, and GO TO a county seat, and a local station therein, and back to point of divergence, over seven miles before proceeding to its destination.

5. To practically destroy the right of two railroad companies whose railroads unite at the boundary line of two states to establish an interstate fast train, which shall run through over such parts of both roads as constitute such interstate line without unreasonable delay at the point where they unite, or without being turned off such direct through line upon another part of one of said railroads which is not and cannot be made a part of such through direct line.

The power over interstate and foreign commerce assumed by the State of Illinois, in this Act of 1879—as the same is construed by her Supreme court—involves and comprehends the claim of supreme power by said state over all the instrumentalities of interstate and foreign commerce, while the same are within her boundaries, and over the transportation itself, which is an essential part of interstate commerce.

If said state has the power to arbitrarily require *all* railroad trains—whether interstate, fast mail, limited or not—*to stop* at county seats, without reference to public health, safety or morals, and without reference to whether all of such trains are or not needed for full and adequate train service at such county seats, then she has the power to require every one of such trains to *stop* at every station on such roads, within the state, whether they be county seats or not.

If she has the power to stop an interstate fast mail

train when she pleases, though every station in her borders has by other trains full and adequate mail and train service, and turn such fast mail train seven miles *out of its course*, she has the power to compel it to go fifty miles out of its course.

If she has the power to compel every regular passenger train to *take on passengers* at every county seat,—no matter how many trains may be operated on such road,—nor what their purpose or connections are, nor whether other trains adequately meet all the demands of passengers at such station, she has the power to compel every train to *take on passengers at every station*, whether it be a county seat or not, or at every crossing of a public road in the state.

The extent to which she has or will exercise the power in no way affects the existence or residence of such power.

And if it be suggested that the comity or good sense of the state is a sufficient security against her unnecessarily requiring *every* passenger train to stop and take on passengers at *every* station or public road crossing, it is sufficient to reply, as did Chief Justice MARSHALL, in the case of *Brown* v. *Maryland* (12 Wheaton, 447), to a similar suggestion: "The constitution has not confided this subject to that good sense. It is placed elsewhere. The question is—where does the power reside? Not how far it will probably be abused."

But, whatever the good sense of said state or her love for her sister states may prevent her from doing, it appears in this case that she has, under the act of 1879, as construed by her Supreme court, arbitrarily and positively required *every* regular passenger train (which they

hold, includes fast mail trains and express trains and all trains regularly run) to stop at the depot in county seats, and to receive and put off passengers at every one of such depots. And by looking at a railroad map of the United States it will be seen that this interstate railroad, known as the Illinois Central, is operated in, say forty counties in Illinois, four counties in Kentucky, seven counties in Tennessee, twenty-three counties in Mississippi and five parishes in Louisiana; also in one county in South Dakota, one county in Minnesota, twenty-six counties in Iowa, four counties in Wisconsin and one county in Indiana, say one hundred and seven counties, and allowing a delay of ten minutes for slowing up, stopping, taking on and putting off passengers at a depot in each county and regaining speed of train it would consume 1,070 minutes, or about eighteen hours. Or, taking those parts of said railroads which are operated as a direct through line from Chicago to New Orleans, which crosses forty-eight counties, such stops would amount to eight hours' delay to every train between those points, and if such train had to go off the direct line, as in this case, a still longer time.

It is a matter of common knowledge that the distance from New York to Chicago and the distance from Chicago to New Orleans are the same, each being a little over 900 miles by the most direct railroad line; and that the necessities of interstate and foreign commerce have forced the railroad lines between New York and Chicago to put on fast mail, limited and other interstate through trains, which use such parts of several railroads as make a direct through line, and that such interstate passenger trains cover the whole distance in one day, only because no such restrictions as are imposed in this case hinder them from such rapidity of transit between the states as

has greatly increased commerce among the states and with foreign nations, and directly tended to produce that homogeneity among the people of the several states which insures domestic harmony, if not the very existence of this nation itself.

If each of the states between New York city and Chicago should pass and so construe such a law as has the State of Illinois, can it be pretended that it would not be a regulation of interstate and foreign commerce? Would not such laws make all their trains practically slow, local state trains? Would they not thus at once destroy the larger part of such interstate commerce between Chicago and New York?

And, if it would produce these results, as between Chicago and New York city and the intervening states, would it not produce the same results between Chicago and New Orleans and the intervening states?

Such regulations of interstate commerce would make impossible interstate limited or fast mail trains, or any such train as the Empire State Express from New York to Buffalo.

The pressure of interstate and foreign commerce for rapid transportation is so great that in Europe as well as in this country, human ingenuity has been in a continual strain to increase the possibilities of safe, rapid transit; and each year has made steady progress in faster and faster trains, by improving the roadbeds with heavier rails and more ballast, by cutting down grades and straightening curves, by enlarging the driving wheels of engines, and other improvements in machinery, by appliances for taking water without stopping at water tanks, by carrying dining cars, so as to avoid stops at eating-houses.

The highest speed consistent with safety is demanded by modern commerce; and the transportation company that has it, receives its reward; the one which neglects it, whether voluntarily or by reason of such hindering, selfish, arbitrary laws as the one we are considering, loses all its interstate and foreign business; and that means its rapid degeneration into poor roadway and equipment, and finally into insolvency.

These laws of commerce cover the whole country, pervade every avocation and business, and inexorably control the carrying trade. No single state is *competent* to regulate them. The history of the efforts of single states to do so, shows with striking prominence the narrow views, the selfish purposes, the discriminating regulations that, if allowed, not only destroy interstate commerce, but beget such jealousies and retaliations by one state towards another as portend a destruction of the government itself.

XIII.

RULINGS OF COURT BELOW.

The court below sustained demurrers to the answer or pleas of appellant, by which it alleged and under which it was prepared to prove, 1st, that it furnished and supplied the public on this three and one-half miles of road (not a part, nor capable of being made a part, of said through direct line), and the depot in Cairo "ample accommodations to meet the demands of public convenience and business necessities," and that it daily furnishes and supplies to the said public at said railroad station not only a sufficient number of "regular passenger trains to meet the demands of public convenience and business necessities, but it furnishes and supplies to the public at said railroad station extensive accommodations for the carriage of passengers, which are more ample and more liberal than are furnished and supplied to any other city of the State of Illinois of the same or near the same population and wealth as the said county seat of Alexander county," and, many other facts, which showed full, adequate, and complete, compliance with its duties as common carrier, so far as said depot and three and one-half miles of road were concerned. (Pr. Rec., 18–19.)

2. That there was no incorporated nor platted village, town or city where Cairo now is at the time of the location of appellant's road. (Pr. Rec., 19.) And that it constructed its road as required by the act of Congress and its charter, in a direct line to the Ohio river, near its junction with the Mississippi river, and acquired land at that point on the north side of the Ohio river, necessary

for a continuation of said "Central Railroad" southerly, and for a connection with that part of said "Central Railroad" from the Gulf to the Ohio river. That the *physical conformation of the land and rivers* near that point was such that this through direct line from the North *could not run* to the Ohio river at *a point nearer* the *junction of the two rivers than the one selected.* (Pr. Rec., 22.) And that a connection of the parts of this north and south railroad contemplated by Congress and the charters of the several states was *not practicable at any point nearer the junction of said rivers*, and that even at that point it was necessary to curve the north descent from the bridge sharply to the east on the north side of the Ohio river to avoid running into the Mississippi river; and that the height of the bridge—as required by act of Congress—made it sixty-seven feet above the natural level of the ground in Illinois, so that if it had been possible to cross the river at the depot in Cairo, the lowest part of such bridge would have been sixty-seven feet above said depot and the city of Cairo, and would have run into the Mississippi river before reaching the ground, by any practicable curve. That the part of this trunk line from the Lakes to the Gulf, so contemplated and authorized by congress and the several states, from the Lakes to the Ohio river, was completed to the Ohio river, as aforesaid, before the line from the Gulf had reached the Ohio river, and that appellant, while waiting for the connection with the southern line at said point (which point was as near as practicable to the junction of said rivers for said crossing and connection), extended by a sharp westward turn from said point, a track upon the levee bank of the Ohio river to a point several miles below said point of practicable crossing, the

more easily to do business with watercraft along said levee, there being no town or village there. (Pr. Rec., 22.)

3. That appellant did not build said railroad bridge, but the same was built by the Chicago, St. Louis and New Orleans Railroad Company, which had extended the New Orleans, Jackson and Great Northern and Mississippi Central Railroads to the Ohio river, thus completing the trunk line from the Gulf to the south bank of the Ohio river; and thereupon said Chicago, St. Louis and New Orleans Railroad Company had constructed said railroad bridge, under authority of the State of Kentucky, across the Ohio river, to low water line on the Illinois side of said river; the whole of said river from low water line on the north or Illinois side being within the State of Kentucky. So that *neither the location* nor *height of of said bridge was determined by appellant.* (Rec., 22, 23, 24.) But the northern end of said bridge abutted upon the Illinois bank at the point where appellant's direct line of railroad from the north reached said river, as aforesaid.

4. That appellant, in order to connect its railroad with the northern end of said railroad bridge, so that the continuation of said "Central Railroad" from Lakes to Gulf should be complete, as contemplated by the Act of Congress, and the several state charters of this interstate line, and also as required by the general Act of Illinois of 1867, built a connection of its railroad tracks with the said bridge, at a grade which shows that in getting down from said bridge to the the level of its railroad, it used as little space as practicable, and that the point where said bridge approach reached the level of appellant's railroad, and made a junction therewith, was in fact and necessarily nearly a mile outside of the nearest

corporation line of the county seat of said county, and over three and one-half miles from the county seat depot, and that where the bridge approach first reached the said county seat corporation line, it was about forty feet above the level of the ground, and was from forty to sixty-seven feet above any part of the level of the ground embraced within the *extended* corporation lines of said county seat, and far distant from any inhabited portion thereof, and on a grade of thirty-five feet to the mile. (Rec., 23.)

5. That the schedule for said fast mail train was prepared and regulated under direction of the Postoffice Department of the United States, in accordance with Sec. 6 of the Act of Congress of 1850, originating this interstate railroad, and is not subject to the orders of appellant as other schedules are, and that said fast mail train was organized—not for carrying passengers—but a special mail train, to rapidly carry the United States mail from Chicago to Mobile and New Orleans, leaving Chicago at 3 A. M. And that the stopping of said interstate fast mail train at the end of said incline, and the compelling, by mandamus, the whole thereof to go off from the direct through line, to said depot and returu, more than seven miles—would be unlawfully detaining the United States mail and interfering with interstate commerce, and a violation of the consitution of the United States. (Rec., 23, 24, 25, 26.)

6. That outside and north of the boundaries of said county seat, at the junction of the line from the depot in said county seat with the interstate line, the engines hauling said fast mail train are changed; the engine which brought it from the north hauling whatever was destined to Cairo down to the depot in said county seat,

and the fresh engine carrying the fast mail interstate train over said bridge towards the Gulf.

All these and other defenses set up by appellant under the commerce clause of the Federal constitution and acts of Congress regulating interstate and foreign commerce, denying the power of a state to so delay and send out of their way interstate trains and United States mails, were held by the court to be no defenses, and the pleas or answer of appellant setting them up were stricken out on demurrer, and proof in support of said defenses was not allowed. (Rec., 30–96–97.)

Indeed, the record shows that no defense or proof was allowed which questioned the supreme power of the state to deal with appellant and all its trains and all its interstate and foreign commerce as if it was a purely local concern—and without reference to the other states or the United States. One instance will suffice. The appellant offered to prove "that the government of the United States, through the post-office department, had fixed the schedule of running time of the fast mail train, and that the railroad company cannot change that time." And the court replied: "The record may show that the objection is sustained to the testimony, for the reason that it is not competent for the defendant to enter into the contract with the government of the United States, whereby it renders itself incapable of complying with the laws of Illinois." (Rec., 96.)

The Supreme court of Illinois affirmed all the rulings of the court below, and treated with impatience any plea, proof or suggestion which was founded on the commerce clause of the Constitution of the United States, or which tended to limit the absolute power of the state to deal with this part of said interstate railroad line, on account

of it being an interstate railroad *in fact*, or on account of it being *recognized* and *dedicated* as such interstate railroad, to the general uses of commerce among the states, by four other states as well as the State of Illinois, and which was actually engaged at the time, and with this fast mail train, in commerce among the states and with foreign nations, or on account of its having been originated and destined by the Act of Congress, and the grant of national lands, as a trunk line between the lakes and the gulf, and the acceptance of said Act of Congress and land grant by the State of Illinois and the other states, and their undertaking to use the lands granted by Congress, in accordance with the trust imposed, to wit: the building of a trunk line of railroad from the lakes to the gulf, and for no other purpose.

These things were held to be impertinent, insufficient, unworthy of issue or proof.

So the plea, or answer, that with other trains appellant gave full, adequate and complete service to the town and depot of Cairo, far more and better than any other town of its size or wealth in the State of Illinois was given, and that it was necessary for the other states in whose territory part of this interstate line lay, and for commerce among the states, and with foreign nations, to have this one train not go off the direct line to the depot in Cairo, was held to be unworthy of issue or proof.

So the concrete case of a train made up as a fast mail train from Chicago to New Orleans, under direction of the post-office department of the United States, in express conformity to section 6 of the Act of Congress of September 20, 1850, which should leave Chicago at 3:20 A. M., on the arrival of the fast mail from the east, and whose schedule of running time appellant offered to

prove, had been fixed by the United States government as an interstate, fast mail service, and that the railroad company could not change said schedule—this, also, was excluded, as unworthy of issue or proof, and as being no sort of answer to the power of the State of Illinois to require such train, or any train, or every train to stop at the bridge junction and turn off the interstate line, go thence into the county seat and down to a depot in Cairo and back, over seven miles out of its way, before proceeding to its destination; but that said train, and every other train, no matter how many may be put on—no matter how much interstate or foreign commerce may reqire, that some one of such trains shall not be delayed unnecessarily—no matter whether such arbitrary law that every regular passenger train shall so stop—go off from the direct line to its destination, a distance of over seven miles, and stop at the Cairo depot to take on passengers, shall make it impossible to give the fast service required by interstate and foreign commerce; no matter whether the enforcement of such law by one of these states shall make it impossible to give the other states on said line, equal favors. In short, no matter what the result is, the State of Illinois, by this statute, as construed by its court of last resort, utterly ignores the existence or duties of an interstate railroad—the rights of the other states through which it runs—the trust imposed by the act of Congress and accepted by said states, and the necessities of modern commerce; as well as the commerce clause of the constitution of the United States.

If the State of Illinois has the power to do this, so have the States of Kentucky, Tennessee, Mississippi, Alabama and Louisiana. And it is certain that if such unreasonably selfish power is exercised by the one to build

up her towns, at the expense of the towns in her sister states, they, too, will enact such laws. Unless, indeed, in millennial unselfishness, when Illinois takes a coat, her sisters will give her a cloak, also.

XIV.

OPINION OF SUPREME COURT OF ILLINOIS.

Turning now to the opinion delivered by a majority of the Supreme court of Illinois in this case, let us see how it escapes from the Federal questions raised by the pleadings and facts of the case.

Looking at the opinion alone, and without reference to the pleadings and facts, it seems that the judge delivering it had in mind—more or less definitely—three grounds, upon one or all of which, together, the court could hold the state statute, as construed, a valid exercise of the power of the state, notwithstanding the commerce clause of the constitution of the United States.

These grounds may be briefly stated as follows:

1. The state had the right to prevent the railroad company from abandoning this three and a half miles of railroad, and the depot and terminus thereon. (Rec., 118–120.)

2. That the necessity of avoiding the terminus in reaching the bridge "with this fast mail train—if such necessity exists—has been created by appellant's own act in so constructing the approach to the bridge as not to make the legal terminus of the road a part of the continuous thoroughfare over the bridge." (Rec., 121, 122.) "And that the privilege of connecting with a foreign road does not impair the obligation to submit to the control of the state which has granted the charter." (Rec., 121.)

3. That the Act of Illinois, as construed, is the exercise of the state's police power, and hence valid, notwithstanding any provision of the constitution of the United States. (Rec., 119, 120, 121.)

Considering these three grounds in the order named—it is to be observed as to the first one, that there is nothing in the pleadings or proof which implies any intention to abandon this part of the railroad; but, on the contrary, the answer of appellant explicitly asserts the contrary, and sets up facts which show that so far from abandonment, it is giving full, adequate and complete service thereon; indeed, more than any other place of its size and wealth in the State of Illinois. (Rec., 18–19.)

And so the proof shows such to be the fact.

Is it not singular—to say the least of it—that after having sustained a demurrer to this part of the answer—and, ignored the schedules and facts proven—which utterly disproved any idea of abandonment—the court should, while refusing to allow even an issue upon this question so tendered by appellant, at the same time, make it one of the chief grounds upon which is rested its opinion against appellant?

Possibly the court, in what it says about abandonment, was attempting to state a hypothetical opinion in an imaginary case. But, however that may be—this record shows that this very issue was tendered by appellant in this case—declined by the opposite party—stricken out by the court—and then made a basis of an opinion, adverse to appellant.

It is, we believe, quite unusual for a court to thus refuse a hearing to a litigant, upon an issue tendered, and yet decide the case against him upon such issue.

No doubt, if the assumed case of an interstate railroad company abandoning a part of its railroad, which is not so situated as to be made a part of such interstate line, shall ever arise—the state would, within the forms of established law and the provisions of the Federal Constitution, find a sufficient remedy in the forfeiture by proper proceedings of the charter of such company, or otherwise; without attempting, by statute or peremptory mandamus, to operate an interstate railroad; and to so operate it, as that the local part, so abandoned, should not only have full and adequate train service upon it, but should also unnecessarily, unreasonably and arbitrarily interfere with other trains and commerce among the states over such interstate railroad as to practically destroy such commerce and bankrupt the carrier.

An examination of the record in this case as to the second ground upon which the Supreme court of Illinois bases its opinion will show that it has no foundation in fact, and is strikingly unfair in its statements and conclusion. The court says (Record, 121): "The appellant has not extended its road to the bridge from the terminus at the corner of Second and Levee streets in Cairo, but from a point three miles north of the terminus; *hence* the necessity for avoiding the terminus in reaching the bridge, if such necessity exists, has been created by appellant's own act, in so constructing the approach to the bridge as not to make the legal terminus of the road a part of the continuous thoroughfare over the bridge."

The record, page 102, shows the foot of the approach to the bridge is at a point north from the uninhabited *corporate limits* of Cairo, not north of the railroad's "terminus," as stated in the opinion. In fact, three

miles north of the railroad terminus would be in the Mississippi river, near its west shore, or entirely in the State of Missouri.

The court says that the not making "the legal terminus of the road a part of the continuous thoroughfare over the bridge, and the necessity for avoiding the terminus in reaching the bridge 'have been' created by appellant's own act." (Record, 121, 122.) Whereas, the answer of appellant (Record, 22), shows that "the peculiar conformation of the land and water at and near the junction of the Ohio and Mississippi rivers is such that a bridge across the Ohio river, connecting the southern and northern parts of the Central Railroad mentioned in said act of Congres *is not practicable at any point nearer to the end of its track on the bank of said river in Cairo, or below it, than the place where it now is.*. And that even at the place where it now is, it became necessary, in order to avoid the Mississippi river in its course above the city of Cairo, to curve the incline or approach to said bridge from the north sharply to the east, after leaving said bridge; the elevation of said bridge, as required by the act of Kentucky and the general acts of Congress being so great that it is sixty-seven feet above the natural level of the ground on the Illinois side of said river." (Record, 22.)

And that appellant did not, as untruly alleged in said petition, build or cause to be built the bridge; but that it "was built by another corporation under authority from the State of Kentucky," the whole Ohio river at that point being within the boundaries of Kentucky. (Rec., 23.)

So that instead of it being true that the "not making the legal terminus of the road a part of the continuous

thoroughfare over the bridge" was created by the act of appellant, as stated by the court, the truth is that it was not physically practicable to make it so. If the bridge could have been extended across the Ohio river at right angles to the current of the river, as required by the federal laws, to the Illinois side at a point opposite what is called the terminus of the road, or Cairo depot, the end of it would be sixty-seven feet from the lowest part of the bridge to the level of the ground, and the approach to the ground, by any practicable grade or curve, would land in the Mississippi river. Instead of the act of appellant, the height of the bridge and the crossing at right angles to the current were fixed by federal laws. Instead of appellant by its own act avoiding the making of the legal terminus the beginning of the approach to the bridge, and thus making it a part of the continuous thoroughfare, it was not physically practicable to do so.

Thus is shown another instance in which the State Supreme court, in an opinion affirming the rulings of the court below, sustains a demurrer to the answer of appellant properly setting up material facts in its defense, and in the same opinion,—assuming the facts to be contrary to those alleged,—adjudging that the omission of appellant to have the bridge and its approach at its depot in Cairo, and the putting of it elsewhere was a condition of things "created by appellant's own act," and at the same time refusing to hear pleas or proof that it was physically impossible under the laws of Congress and the location of the land and water there to do what the court assumed appellant should have done.

The court, as the third ground upon which in part it rested its decision that this state statute as construed and applied in this case, was valid, suggests that the stopping

of this interstate fast mail train on its way to destination, and turning it off therefrom to go to and return from a local station where it was not scheduled to go and where it had no business, before proceeding on its way, was the valid exercise of the *police power* of the state.

The obvious answer is that as a matter of fact it is not a police regulation, and, if it might be so called, yet the state cannot violate the Federal Constitution any more by an act called a police regulation than by an act called by any other name, or founded upon any other supposed power of the state.

Arbitrarily ordering an interstate fast mail train to leave its route and go off from said interstate line seven miles to a place where it has no business, before proceeding to its destination, does not come within any of the purposes of police power, has no relation to the morals, the safety or the health of the public, and is simply and purely a perverse and useless regulation of commerce among the states, which, if adopted by each of the other states, will destroy such interstate commerce, but by which, so long as the other states fail to exercise a similar power, the State of Illinois will selfishly injure such sister states by unnecessarily and unreasonably hindering commerce among the states and also practically ruin the interstate carrier.

Police power "involves a provision of means, for enforcing the legal maxim which enunciates the fundamental rule of both the human and the natural law, *sic utere tuo ut alienum non lædas.*" * * * "Any law which goes beyond that principle—which undertakes to abolish rights, the exercise of which does not involve the infringement of the rights of others--or *to limit* the exercise of rights beyond what is necessary to provide for the public welfare and the general security, cannot be included in the police

power of the government. It is a governmental usurpation and violates the principles of abstract justice, as they have been developed under our republican institutions." Tiedeman's Limitations of Police Power, pages 2 and 4.

Secondly. A state cannot, under the guise of police regulations, reassume the power to regulate "commerce among the states" which is expressly delegated to the Congress—nor pass any valid act in violation of the constitutionof the United States—whatever such act may be called, whatever may be its purpose, or the supposed basis upon which it rests. If it is in conflict with the federal constitution or laws duly passed thereunder, it is null and void.

"Any accurate statement of the theory upon which the police power rests, will render it apparent that a proper exercise of it by the state, cannot come in conflict with the provisions of the constitution of the United States." Cooley's Constitutional Limitations, 5th Ed., p. 709.

XV.

OPINION OF SUPREME COURT OF UNITED STATES CLASSIFIED.

It will avoid much unnecessary confusion in reviewing the published opinions of this court, to bear in mind that there are three classes of cases.

The first class is where the matterss lie within the sphere of the Federal government and within its delegated powers.

The second class is where the matters lie within the sphere of the several states and their reserved powers.

And the third class of cases is where the one, acting under some power it had, yet has, by the mode or extent of

the exercise of such conceded power, unnecessarily infringed upon the sphere or regulations of the other, under a different power, or a power conceded to such other for another purpose.

And, while it may be impossible to reconcile all of the opinions with each other, the *results* reached in most, if not all of them, may be harmonized by clearly defining the three classes, and noting the reason and law which underlies each class.

The first class, are cases, in which the Federal government is supreme and exclusive.

The second class, are cases in which the state government is supreme and exclusive.

And the third class, are cases in which a state in the exercise of an *undelegated power*, either by the mode or extent of its exercise, comes within the sphere of a different power, *delegated* to the Federal government, or into conflict with the mode or extent of the exercise by the Federal government of such *delegated* power.

Of the first class are cases where the power has been surrendered by the states and expressly vested in the Federal government by the words of the Constitution of the United States. Such as the power "to declare war" grant letters of marque and reprisal, and make rules concerning captures on land and water," "to coin money, regulate the value thereof, and of foreign coin," "to establish post-offices and post roads." "to regulate commerce with foreign nations, and among the several states and with the Indian tribes"—and such like.

Of the second class are such local police regulations of a particular locality—within a state—as the abating of a local nuisance, the degree of inflammability of oils which

are used in any place within the state—the regulation of mere local affairs within a state—which do not invade the sphere of national sovereignty, obstruct or impair any authority which the constitution has confided to the Union, or deprive any citizen of rights guaranteed by the Federal constitution—and such like.

Of the third class, are such cases as those in which a state, in the exercise of a power which has not been delegated to the Federal government, but which is reserved to such state, authorizes regulations for a lawful state purpose, and yet, by the mode of its exercise, or the extent to which its regulations in the exercise thereof are pushed—such action on the part of the state, may or does invade the sphere of the powers delegated to the Federal government, or may or does come in conflict with the mode or extent of such regulations as the Federal government may or has made under a different right or power delegated to it. As where a state, in protecting the public health in a locality where miasma and diseases are bred by flat stagnant marshes, authorizes a dam to prevent the incoming of such waters, and thus or otherwise reclaims such lands for useful, healthful purposes; the purpose is lawful—the right to do so in a proper manner is one of the reserved powers of the state, and a power in nowise delegated to the Federal government. Yet in the exercise of such a power, the state may—by the mode adopted, the manner of its execution of such purpose, or by the extent to which its regulations are authorized to be pushed, do things, which Congress acting under a different power, to wit: the power to regulate commerce, might, if it saw fit, prohibit; or after it is done, require it to be undone.

But it will be observed that in such case, it cannot be affirmed that the state is usurping, or basing its regulations upon, a power delegated to Congress; or that the state has any *concurrent* power to regulate commerce among the states, or with foreign nations. On the contrary, the basis upon which the supposed regulations of the state are made, is her right and duty to protect the health of a locality—wholly within the state. And so, also, the power of Congress to prohibit the doing of any particular act which is done in the execution of the reserved power and lawful purpose of such state, or, after it is done, the power to require that it be undone—does not in any part rest upon the ground that the federal government has the power to abate a local nuisance in such state, or build dams and drain such local swamp for the preservation of the health of the people of such state, or in anywise usurp a reserved power of a state; or that Congress has a *concurrent* power with the state in such local matter; but upon the ground that Congress has another power—a delegated power—to regulate commerce; and may, if it sees proper, so exercise such dormant power as to prohibit such local dams or drains, where they make or will result in making unnavigable a short creek, navigable at high tide, and then only for a short distance above the dam so authorized and built for health purposes by the state.

Such an act of the state, having as its basis the reserved right of the state to abate local nuisances and protect the health of those of her citizens residing in such locality, must not be held invalid, as an attempted resumption of a power which has been delegated to the Congress, to wit: the power to regulate commerce; because, as a fact it is not done for that purpose, nor under

any claim of such power. Her action is based on her reserved right to protect the health of the people in that locality, and not in any measure upon an assumed right to regulate commerce among the states. The basis of the power to act, is one of her reserved rights. The purpose to be accomplished by any lawful means, is exclusively within her sphere. If Congress, in the exercise of another and different power, to wit: its power to regulate commerce, shall thereafter establish such regulations as conflict with anything done under the act of the state, passed for protecting the public health, the thing done under such state act so in conflict with the regulation established by Congress, must be undone; because the laws of Congress passed in pursuance of the federal constitution are supreme; and the lawful purpose of the state must be accomplished, if at all, in some other way. But until Congress establishes such inconsistent regulations, the act passed by the state may not be held invalid, simply because Congress *might* if it chose, and under a different power and for a different purpose, make regulations which would be inconsistent with this mode of the exercise of the state's power, in producing a result, which she has the right to produce, to wit: the protection of the health of her people in said locality.

The powers themselves are distinct—they relate to different subjects—the one is delegated to and resident in the United States government alone, the other is reserved to and resident in the several state governments alone. There is no concurrent power of both as to either. The state cannot exercise that delegated to the United States, nor the United States exercise that reserved to the several states.

The conflict, if any should arise under otherwise valid acts of either, in the exercise of their respective powers, is not, in any measure, because there is necessary conflict in the powers themselves, for there is none. Nor because there is any concurrent power residing in both over either subject, for there is none. But it is possible only when the one or the other, in the exercise of their separate powers over different subjects, does or authorizes such acts as bring the regulations of the one in conflict with the regulations of the other. And in such case, the regulations of the one which is not supreme are invalid, only so far as they conflict. As where a state in order to protect the health or abate a nuisance in a locality within her borders, makes regulations reasonable and appropriate for such purpose, which are not intended to and do not necessarily invade the sphere of Federal power nor contravene any provision of the Federal constitution or laws passed in pursuance thereof—such state law may not be held invalid—because Congress *might* in the future, under some delegated constitutional power over a different subject, see fit to make a regulation which would conflict therewith. But if Congress should afterwards, in pursuance of such delegated power, make such conflicting regulation, the state regulation must yield. This is the rule and its extreme limit, and any decision on the idea of concurrent power in two sovereignties over the same subject—or on the exercise of such common power by the one while the power in the other lies dormant—or on the temporary surrender by Congress to the states of any part of a power vested in Congress by the constitution, by which a state law may be held temporarily or permanently valid which resumes in whole or part a power delegated to Congress, or inter-

feres directly or necessarily though indirectly in the sphere of such delegated power, has no just foundation in the result reached in any well considered case, nor in the principles of constitutional law.

However this third class of cases may be reconciled, or upon whatever grounds the opinions delivered in them may rest, it is confidently affirmed that in none of them, considering either the results reached or the reasoning used in the opinions delivered therein, can a state be justified in compelling an interstate train on a direct interstate railroad by peremptory *mandamus* to leave such line and go off to a local station not on such interstate line, before proceeding to destination.

It is the seizing of interstate transportation, itself. It is the direct regulation of commerce among the states.

Nor can there be found in the decisions of this court a case where the right of a railroad company to unite part of its line with parts of other railroads as a direct through interstate line, for the purpose of increasing its income by securing interstate and foreign commerce over such line, has ever been denied; nor the right of said companies so forming said interstate line to put on and run through trains over such direct line without going off therefrom. Especially when they give adequate and full service on those parts of their lines which are not so situated as to be made a part of such through line.

Nor a case where it is held that a state may arbitrarily order *every* passenger and fast mail train on such interstate railroad line—no matter how many may be put on —to *stop and take on passengers* at *every* county seat depot; regulations which have no possible relation to the health, safety or morals of the people of such state, nor the slightest foundation in any of the reserved powers of the state.

XVI.

AUTHORITIES CONSIDERED AND APPLIED.

In *Hall* v. *DeCuir*, 95 U. S., p. 488, Chief Justice WAITE, delivering the opinion, said: "But we think it may safely be said that state legislation which seeks to impose a direct burden on interstate commerce or to *interfere directly with its freedom*, does encroach upon the *exclusive* power of Congress. The statute now under consideration, in our opinion, occupies that position." In this case the constitution of Louisiana had provided that "all persons shall enjoy equal rights and privileges upon any conveyance of a public character;" and the statute referred to, which was passed in pursuance thereof, expressly limited its provisions to "all persons engaged *within this state* in the business of common carriers of persons," and provided that such carriers should not make any discrimination "on account of race or color." The passenger Mrs. DeCuir, a person of color, paid the fare from New Orleans to Hermitage,—*both places within the State of Louisiana.* She was "refused accommodations, on account of color, in the cabin especially set apart for white persons." The state Supreme court held that the statute was valid, and not a regulation of commerce among the states. And this court says—p. 489—as to said statute, that: "while it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage." * * * "It was to meet just such a case that the commerce clause of the constitution was adopted." * * * "If each state was at liberty to

regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. *Each state could provide for its own passengers*, and regulate the transportation of its own freight, *regardless of the interests of others*. Nay more; it could prescribe rules by which the carrier must be governed within the state, in respect to passengers and freight brought from without." * * * "Commerce cannot flourish in the midst of such embarrassments." * * * "Uniformity in the regulations by which he is to be governed from one end to the other of his route, is a necessity in his business, and to secure it, Congress, which is untrammeled by state lines, has been invested with the *exclusive* power of determining what such regulations shall be." (P. 490.)

"If the public good requires such legislation, it must come from Congress, and not from the states." (*Ibid.*, p. 491.)

In *Welton* v. *Missouri*, 91 U. S., a state statute, requiring a license from persons who went from place to place in said state, and sold things which were not produced or manufactured in that state, was held void. And this court says, on page 282. "The fact that Congress has not seen fit to prescribe any specific rules to govern interstate commerce does not affect the question. Its inaction on this subject, when considered with reference to its legislation with respect to foreign commerce, is equivalent to a declaration that interstate commerce shall be untrammeled." * * * "Where the subject to which the power applies, is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of all state authority." (P. 280.)

"It will not be denied that that portion of commerce with foreign countries and between the states, which consists in the transportation and exchange of commodities is of national importance and admits and requires uniformity of regulation. The very object of investing this power in the general government, was to insure this uniformity against. discriminating state legislation." (*Ibid.*, 280.) See also *Brown* v. *Maryland*, 12 Wheaton, 446–448.

In the case of *County of Mobile* v. *Kimbal*, 102 U.S., 702, Justice FIELD, in delivering the opinion of the court, says: "Perhaps some of the divergence in views upon this question, among former judges, may have arisen from not always bearing in mind the distinction between commerce, strictly defined, and its local aids or instruments or measures taken for its improvement. Commerce with foreign countries and among the states, strictly considered, consists in intercourse and traffic, including in these terms *navigation* and *the transportation* and *transit of persons and property*, as well as the purchase, sale and exchange of commodities. For the regulation of commerce as thus defined, there can only be one system of rules applicable to the whole country, and the authority which can act for the whole country can alone adopt such a system. *Action upon it by separate states is not, therefore, permissible.*"

In *Wabash, etc.* v. *Illinois*, 118 U. S., 575, it is held that a state statute preventing a common carrier from charging the same or a greater toll "for the transportation of any passenger or freight of any description on its railroad for any distance *within the state*" than is charged "for the transportation in the same direction of any passenger or like quantity of freight of the same class over a greater distance of the same road" was held to be

void even as to such transportation *within the state* on shipments which were to be carried beyond the state. Justice MILLER, in delivering the opinion, says: "Whatever may be the instrumentalities by which this transportation from the one point to the other is effected, it is but one voyage; as much so as that of a steamboat on the Mississippi river. It is not the railroads themselves that are regulated by this act of the Illinois legislature, so much as the charge for transportation; and, in the language just cited, if each one of the states through whose territory these goods are transported can fix its own rules for prices, *for methods of transit for times and modes of delivery*, and all the other incidents of transportation to which the word 'regulation' can be applied, it is readily seen that the embarrassments upon interstate transportation, as an element of interstate commerce, might be too oppressive to be submitted to. It was, in the language of the court cited above, 'to meet just such a case that the commerce clause of the constitution was adopted.' It cannot be too strongly insisted that the right of *continuous transportation* from one end of the country to the other, is *essential*, in modern times, to that freedom of commerce from the restraints which the state might choose to impose upon it, that the commerce clause was intended to secure." (Pages 572–573.) And he adds, on page 575, after a review of many cases, these words: "We must therefore hold that it is not, and never has been, the *deliberate* opinion of a majority of this court that a statute of a state which attempts to regulate the fares and charges by railroad companies, *within its limits*, for a transportation which constitutes a part of commerce among the states, is a valid law."

It is to be observed that the above ruling was made

before any regulation thereof had been made by Congress; and that, notwithstanding the absence of the exercise of such power by Congress, the state could not regulate, because the power to regulate such commerce, even as to that part of it performed within the state, was fixed in Congress by the commerce clause of the Federal constitution.

In the passenger cases (7 Howard, 399) Justice McLEAN says: "A concurrent power in two distinct sovereignties to regulate the same thing is as inconsistent in principle as it is impracticable in action. It involves a moral and physical impossibility." And he adds, on page 400: "Whenever I consider the nature and object of the commercial power, the class of powers with which it is placed, the decision of this court in the case of *Gibbons* v. *Ogden*, reiterated in *Brown* v. *The State of Maryland*, and often reasserted by Mr. Justice Story, who participated in those decisions, I am brought to the conclusion that the power 'to regulate commerce with foreign nations and among the several states' is *exclusively* vested in Congress."

In the case of the State Freight Tax, 15 Wall., 281, Justice STRONG, in referring to the case of *Crandall* v. *State of Nevada*, 6 Wallace, 42, says: "In any view of the case, however, it decides that a state cannot tax persons for passing through or out of it. Interstate transportation of passengers is beyond the reach of a state legislature." * * * "Transportation is essential to commerce, and every burden laid upon it is, *pro tanto*, a restriction."

In the unanimous opinion of this court in *Railroad Company* v. *Husen*, 95 U. S., 469, it is said:

"Whatever may be the power of a state over com-

merce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations. Power over the one is given by the constitution of the United States to Congress in the same words in which it is given over the other, and in both cases it is *necessarily exclusive*."

And on pages 471–2, in referring to the police powers of a state, it is said:

"But whatever may be the nature and reach of the police power of a state, it cannot be exercised over a subject confided exclusively to Congress by the federal constitution. It cannot invade the domain of the national government."

And the court continues as follows on pages 472–3–4:

"It was said in *Henderson et al.* v. *Mayor of New York*, 92 U. S., 259, to 'be clear, from the nature of our complex form of government, that whenever the statute of a state invades the domain of legislation which belongs exclusively to the Congress of the United States it is void, no matter under what class of powers it may fall, or how closely allied it may be to powers conceded to belong to the states.' * * * 'Neither the unlimited powers of a state to tax, nor any of its large *police powers*, can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the constitution.'" (Page 472.)

* * * * *

"The *police power of a state cannot obstruct foreign commerce* or *interstate commerce* beyond the necessity for its exercise; and under color of its objects not within its scope, cannot be secured at the expense of the protection afforded by the federal constitution. And as its range sometimes comes very near to the field committed by the

constitution to Congress, it is *the duty of the courts to guard vigilantly against any needless intrusion.*" (Pages 473–4. 95 U. S. Rep. *R. R. Co.* v. *Husen.*)

In *Pensacola Telegraph Co.* v. *West Tel. Co.*, 96 U. S., 9, it is said: "Since the case of *Gibbons* v. *Ogden*, (9 Wheaton, 1), it has never been doubted that commercial intercourse is an element of commerce which comes within the regulating power of Congress. Post-offices and post-roads are established to facilitate the transmission of intelligence. Both commerce and the postal service are placed within the power of Congress, because, being national in their operation, they should be under the protecting care of the National Government." * * * "As they were intrusted to the General Government for the good of the nation, it is not only the right but the duty of Congress to see to it that *intercourse among the states*, and the transmission of intelligence are *not obstructed or unnecessrily encumbered* by state legislation.

And in *Telegraph Co.* v. *Texas*, 105 U. S., 464, it is said: "A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods. Both companies are instruments of commerce, and their business is *commerce itself.*"

In *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 203, it is said by Justice FIELD, in delivering the unanimous opinion of this court: "Commerce among the states consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase and exchange of commodities." * * * "And it needs no argument to show that the commerce with foreign nations and be-

tween the states, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of legislation. Congress, alone, therefore, can deal with such transportation; *its non-action is a declaration that it shall remain free from burdens imposed by state legislation.*" (*Ibid.*, 204.)

Justice Bradley says, in *Philadelphia Steamship Co.* v. *Pennsylvania*, 122 U. S., 336, of the transportation of persons and goods between different states, and between the states and foreign countries: "This transportation was an act of interstate and foreign commerce. It was the carrying on of such commerce. It was that and nothing else. In view of the decisions of this court it cannot be pretended that the state could constitutionally *regulate or interfere* with that commerce itself." * * * And he adds: "If Congress has not made any express regulations with regard to interstate commerce, its inaction, as we have often held, is equivalent to a declaration that it shall be free, in all cases where its power is exclusive; and it is necessarily exclusive whenever the subject-matter is national in its character and properly admits of one uniform system." *Ibid.*, 336. See, also, *Robbins* v. *Shelby Taxing District*, 120 U. S., 494, where the court, after enumerating many things which the states cannot do, says: "In a word, it may be said that in the matter of interstate commerce, the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems. The doctrine of the freedom of that commerce, except as regulated by Congress, is so firmly established that it is unnecessary to enlarge further upon the subject." (P. 494.)

In the case of *Bowman* v. *Chicago Railway Co.*, 125 U. S., a statute of Iowa putting limitations upon the carrying of intoxicating liquors into, or selling them in the state, excepting the importation and sale in original packages under laws of the United States, was held void, as in conflict with the commerce clause of the Federal Constitution, while it was conceded that said State Act "was not expressly for the purpose of regulating commerce between its citzens and those of other states, but as subservient to the general design of protecting the health and morals of its people and the peace and good order of the state against the physical and moral evils resulting from the unrestricted manufacture and sale within the state of intoxicating liquors." (P. 476.) But the court says: "If the state has not power to tax freight and passengers passing through it, or to or from it, from or into another state, much less would it have the power directly to regulate such transportation, or prohibit it altogether." (P. 483.) And after reviewing many cases, adds: "If from its nature it does not belong to commerce, or if its condition from putrescence or other cause is such, when it is about to enter the state, that it no longer belongs to commerce, or, in other words, is not a commercial article, then the state power may exclude its introduction. And as an incident to this power, a state may use means to ascertain the fact. *And here is the limit between the sovereign power of the* State and the Federal power. *That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the state; and that which does belong to commerce is within the jurisdiction of the United States. And to this limit must all the general views come,* as I suppose, that were suggested in the reasoning of this

court in the cases of *Gibbons* v. *Ogden*; *Brown* v. *The State of Maryland*, and *New York* v. *Miln*." (*Ibid.*, p. 490.)

See, also, *Leisy* v. *Hardin*, 135 U. S., p. 108, which reviews and affirms many of the cases cited above, and overrules *Pierce* v. *New Hampshire*, 5th Howard, 554, and declares, in the opening sentence of the opinion, that "The power vested in Congress to regulate commerce with foreign nations, and among the several states, and with the Indian tribes, is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is co-extensive with the subject on which it acts," etc.

In *Brauman* v. *Titusville*, 153 U. S., 299, Justice BREWER, delivering the unanimous opinion of the court, says: "Thus in *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S., 650–661, this court, by Mr. Justice HARLAN, said 'definitions of the police power must, however, be taken, subject to the condition that the state cannot, in its exercise, for any purpose whatever, encroach upon the powers of the general government, or rights granted or secured by the supreme law of the land.'" And, on page 302: "We think it must be considered, in view of a long line of decisions, that it is settled that nothing which is a direct burden upon interstate commerce can be imposed by the state without the assent of Congress, and that *the silence of Congress in respect to any matter of interstate commerce is equivalent to a declaration on its part that it should be absolutely free.*"

In *Railroad Commission* cases, 116 U. S., 334, this court, in stating a rule separating things which may and

things which may not be done by a state as to an interstate railroad, adds: "Under this rule *not hing can be done by the government of Mississippi which will operate as a burden on the interstate business of the company, or impair the usefulness of its facilities for interstate traffic.*"

In *Bowman* v. *Chicago*, 125 U. S., on page 495, the court says: "In *Brown* v. *Houston*, 114 U. S., 622–630, it was declared that the power of Congress over commerce among the states is certainly so far exclusive that no state has power to make any law or regulation which will affect the free and unrestrained intercourse and trade between the states as Congress has left it, or which will impose any discriminating burden or tax upon the citizens or products of other states, coming or brought within its jurisdiction." * * * "So long as Congress does not pass any law to regulate commerce among the several states, it thereby indicates its will that that commerce shall be free and untrammeled, and any regulation of the subject by the states is repugnant to such freedom." (*Bowman* v. *Chicago*, 125 U. S., 495.)

It needs no argument to prove that the regulations by the State of Illinois in the present case, which arbitrarily require *all* regular passenger trains on an interstate railroad to take on and let off passengers at every county-seat, or to stop all such trains at each county-seat a sufficient time to receive and let off passengers, or to arrest the progress of such train towards its destination, and require the whole thereof to go miles away and off from such interstate line, are burdens on the interstate business of appellant; or that such regulations impair the usefulness of its facilities for interstate traffic. Manifestly they are burdens too grievous to be borne; burdens which

if adopted by each of the states will utterly disorganize, impede and finally destroy, its interstate commerce, as surely as if each state, under the guise of police power, should adopt regulations which prohibit all interstate trains from traveling at a greater speed than five miles an hour, or regulations which should require all trains to stop at every station in the state, or regulations which would prohibit appellant from running any train into another state, but require the interstate carrier to have separate trains in each state, and transfer passengers, mail and freight, at the state lines.

It is too manifest for argument that the regulations of the State of Illinois, as applied in this case, are more burdensome regulations to commerce among the states, than state regulations which should require companies operating interstate through trains to pay a tax on each through passenger. *Crandall* v. *Nevada*, 6 Wallace, 35. Or a license tax upon an agent of such railroad company, who solicits passengers to go over such interstate railroad. *McCall* v. *California*, 136 U. S., 104. Or a tax on sleeping cars carried as a part of such through train. *Pickard* v. *Pullman Car Co.*, 117 U. S., 34. Or a tax on the receipts derived from interstate commerce over its line. *Philadelphia Steamship Co.* v. *Pennsylvania*, 122 U. S., 326. Or upon the tonnage of such interstate business. Case of the State freight tax, 15 Wallace, 232.

All these state regulations and many others have been held to be void, because they are regulations of commerce among the states—but we will not extend this brief by referring to them all.

In view, however, of the fact that in this case the train to be stopped on its way to destination and compelled by peremptory mandamus to go out of its direct route, was

an interstate fast mail train, specially organized as such, containing United States mail, which was being transported under direction of the Post Office Department, as required in section 6 of the act of Congress originating this trunk line of railroad, approved September 20, 1850, we call attention to the case of *In Re Debs*, 158 U. S., 564, in which this court says: "What are the relations of General Goverment to interstate commerce and the transportation of the mails? They are those of direct supervision, control and management." * * * "Among the powers expressly given to the National Government are the control of interstate commerce and the creation and management of a post-office system for the nation." (Page 578, 579.) * * * "The uniform course of decisions has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce." *ibid*, page 581.

If each state may make such regulations of interstate fast mail trains as is attempted in this case, the power of the United States in any case or upon any railroad, to secure the rapid transportation and distribution of its mails is at the mercy of the several states. In this case also the express provision of Congress as to the transportation of mail on *this* railroad is utterly ignored. Indeed, the whole system as now organized under the direction of the Postoffice Department will be disrupted and disarranged—and such a thing as rapid, interstate commerce, or the delivery of New York mails in Chicago, and Chicago mail in New Orleans within a day, be made impossible.

Nay, more, the arbitrary regulation of each state may stop said mails on the direct road across the states to destination, require them to be carried *off and away from*

the direct line to the terminus of every road, a portion of whose line forms any part of the interstate line, *before proceeding to destination.*

In order to a realization of the gravity of these suggestions, it is only necessary to glance at the wonderful facilities and appliances now in use in the rapid transportation and distribution of the United States mail, the enormous sums of money invested by the carriers and by the Federal government, under the continued pressure and growth of modern commerce, *to save time* in the transmission and delivery of the mails,—all interstate passenger trains, with many cars in each filled with United States mail, alone, hurrying over the trunk lines from one great distributing point to another, a thousand miles away; every passenger train a mail train, mail cars built and operated exclusively for carrying the mail, manned with many postal clerks, who night and day, as it flies, are separating, assorting, distributing the mail for each place on the line; mail cranes and machinery at stations and on cars, whereby in the twinkling of an eye the through mail bag is delivered and the local mail bag received, and before another post-office is reached, the local bags of mail opened, assorted and ready for delivery at each place as the flying train passes it. A fully equipped post-office on wheels, running night and day at about an average of forty miles an hour among the several states, catching up the mail at every place, assorting the letters as it runs, dropping the mail belonging to each place as it rushes past.

See, also, the local post-offices in the larger cities hastening the opening of the mail received from the flying post-offices, sending out runners to every street and house, delivering the mail every hour. Mails from New

York carried nearly a thousand miles to Chicago and distributed there in twenty-seven hours after leaving New York; mails across the continent from New York to San Francisco and from the great lakes to the Gulf of Mexico, and every whither, rushing with the speed of the wind upon one hundred and seventy thousand miles of interstate railroad to every part of the United States.

If there be one glory of this great country which may be called the excellent glory, it is the marvelous rapidity of the change of our heterogeneous people from provincialism and local jealousies to a cosmopolitan civilization and homogeneity; made possible only by this wonderful system of rapid transit and distribution of the mails and intercommunication of its people; and this in turn has been made possible only because the confusion and jealousies of the several states under the "Articles of Confederation" have given way to the unity and strength enshrined in the words of our present constitution "Congress shall have power to regulate commerce among the states and with foreign nations," and "establish post-offices and post-roads."

The volume of mail depends upon the rapidity and frequency of its carriage and distribution, just as the homogeneity of our people depends upon the rapidity and frequency of their intermingling. *Now*, under this superb system of speedy intercommunication—the glory of this country, and its best assurance of perpetuity—we have a post-office department which by these interstate railroads, carries and delivers a letter for two cents thousands of miles, and, from the enormous tonnage of mail matter handled, is nearer self-supporting than any other department of the government; instead of thirty cents a letter, and not enough mail matter carried—even be-

tween the chief cities—to pay the expense of a four-horse mail coach once a week, as it *was*, not many years ago.

Nor is this all. The whole business interests of the country, in all their ramifications, have been adjusted to this rapidity of transmission and delivery, every hour in time gained, is a distinct and healthy impulse to our commerce; and any state regulation which unnecessarily obstructs the development of the highest speed consistent with safety and the quickest intercommunication between all the parts of this vast country is a calamity to all commercial business, as well as a menace to the stability of enlightened government itself.

XVII.

It is thus shown that in the entire absence of any regulation of interstate commerce by Congress, such state regulations as those attempted in this case cannot be lawful. First, because by the Federal compact, the several states surrendered and the Congress was invested with, the exclusive power to regulate commerce with foreign nations, among the several states, and with the Indian tribes, and such power cannot be resumed in whole or part except by a change of the Federal constitution in the mode therein provided, or by successful revolution. Second, because the several states are incompetent, when acting separately, to regulate such commerce; both because such commerce is in itself indivisible, and because a separate state covers only one forty-fifth of the territory or commerce of the United States. And, even if the several states could possibly, by agreement or compact with each other, come to one mind as to what such regulations of the interstate and foreign commerce of this country

should be, yet, by Article 1, Section 10, of the constitution it is expressly provided that "No state shall, without the consent of Congress lay any duty on tonnage" nor "enter into any agreement or compact with another state or with a foreign power." Third, because uniformity of the regulations of commerce among the several states and with foreign nations is necessary—and only the United States represents all the people of the several states, or is territorially or otherwise competent to such regulation.

And so we reach the logically necessary conclusion, both on reason and authority, that the exclusive power to regulate such commerce is in Congress alone, and therefore that a state cannot regulate such commerce, whether Congress has acted under such exclusive power or not. That all regulation does not consist in restrictions and limitations, and that the refusal of Congress to put any one restriction or limitation upon the freedom of such commerce, or its failure to do so, manifests alike the will of Congress that such commerce shall be free from any such limitation, or from any restriction whatever.

But we *now* call attention to the fact that *Congress has acted* under the commerce clause of the constitution—*has exercised* such power, not only as to commerce with foreign nations, but also as to commerce among the several states; and also that such regulations so made by Congress are inconsistent with the regulation thereof by the several states, and particularly, with the assertion of power in a state to make such regulations as are attempted in this case.

Among these regulations by Congress are the following:

1. As to this particular railroad, Congress by the act

approved September 20, 1850, aforesaid, section 6 thereof, declares such regulations as follows: "That the United States mail shall at all times be transported on the said railroad, *under the direction of the Post-office Department*, at such price as the Congress may by law direct" and by section 4 thereof declares that said "railroad and branches shall be and remain *a public highway for the use of the Government of the United States.*"

2. By the many regulations and "directions" of the Post-office Department as to special mail cars, schedules of trains and time of departure and delivery, with penalties authorized by general acts of Congress for failure to transport and deliver the mails on schedule time. The Revised Statutes of U. S., Secs., 3997–4005—providing that the postmaster general "shall arrange the railway routes" * * * "according to the size of the mails, the *speed* at which they are carried, and the frequency and importance of the service." Sec. 3997—"All railway companies to which the United States have furnished aid by grant of lands, right of way or otherwise, *shall* carry the mails." "The mails *shall be conveyed with due frequency and speed*, and suitable room, fixtures and furniture in a car or apartment properly lighted and warmed, shall be provided for route agents to accompany and distribute the mails."

3. So in many general acts of Congress, it has established regulations of commerce with foreign nations and also among the several states; some of which are mentioned in the following quotation from the opinion of this court In Re Debs, 158 U. S., pp. 578–58–591. "Among the powers expressly given to the national government are the control of interstate commerce and the creation and management of a post-office system for the nation. Ar-

ticle 1, section 8, of the constitution provides that 'the Congress shall have power * * * Third, to regulate commerce with foreign nations and among the several states and with the Indian tribes. * * * Seventh, to establish post-offices and post-roads.' "

"Congress has exercised the power granted in respect to interstate commerce in a variety of legislative acts. Passing by for the present all that legislation in respect to commerce by water, and considering only that which bears upon railroad interstate transportation, (for this is the specific matter involved in this case,) these acts may be noticed: First, that of June 15, 1866, c. 124, 14 Stat. 66, carried into the Revised Statutes as section 5258, which provides:

"Whereas the Constitution of the United States confers upon Congress, in express terms, the power to regulate commerce among the several states to establish post-roads, and to raise and support armies; Therefore, Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That every railroad company in the United States whose road is operated by steam, its successors and assigns, be, and is hereby, authorized to carry upon and over its road boats, bridges and ferries, all passengers, troops, government supplies, mails, freight and property on their way from any state to another state, and to receive compensation therefor, *and to connect with roads of other states so as to form continuous lines for the transportation of the same to the place of destination.*" "Second. That of March 3, 1873, c. 252, 17 Stat., 584, (Rev. Stat. Secs. 4386 to 4389), which regulates the transportation of live stock over interstate railroads. Third. That of May 29, 1884, c. 60, Sec. 6, 23 Stat., 31, 32, prohibiting interstate transportation by railroads, of live stock affected with

any contagious or infectious disease. Fourth. That of February 4, 1887, c. 104, 24 Stat., 379, with its amendments of March 2, 1889, c. 382, 25 Stat., 855, and February 10, 1891, c. 128, 26 Stat., 743, known as the "interstate commerce act," by which a commission was created with large powers of regulation and control of interstate commerce by railroads, and the sixteenth section of which act gives to the courts of the United States power to enforce the orders of the commission. Fifth. That of October 1, 1888, c. 1063, 25 Stat., 501, providing for arbitration between railroad interstate companies and their employes; and sixth, the act of March 2, 1893, c. 196, 27 Stat., 531, requiring the use of automatic couplers on interstate trains, and empowering the Interstate Commerce Commission to enforce its provisions.

Under the power vested in Congress to establish post-offices and post-roads, Congress has, by a mass of legislation, established the great post-office system of the country, with all its details of organization, its machinery for the transaction of business, defining what shall be carried and what not, and the prices of carriage, and also prescribing penalties for all offenses against it."

"Obviously these powers given to the national government over interstate commerce and in respect to the transportation of the mails were not dormant and unused. Congress had taken hold of these two matters, and by various and specific acts had assumed and exercised the powers given to it, and was in the full discharge of its duty to regulate interstate commerce and carry the mails. The validity of such exercise and the exclusiveness of its control had been again and again presented to this court for consideration. It is curious to note the fact that in a large proportion of the cases in respect to interstate commerce brought to this court, the question presented

was of the validity of state legislation in its bearings upon interstate commerce, and the uniform course of decision has been to declare that it is not within the competency of a state to legislate in such a manner as to obstruct interstate commerce."

If, therefore, there is anything in the several suggestions of the older cases, of a concurrent power, or of a state making certain local regulations in the absence of any congressional regulations, or about a dormant power in Congress, it does the appellee no good in this case, because Congress has acted; has adopted regulations as to the transportation of persons and property, and the United States mail, among the several states—regulations upon which modern commerce and the whole post-office system of this country is based, and upon the faith of which, common carriers have invested untold millions of dollars in making continuous through lines of interstate railroads, by combining such parts of existing lines as make the most direct and safest continuous through line.

For these reasons, and without extending this brief by a resume of its arguments, I confidently ask that the opinion and judgment of the Supreme court of Illinois in this case be overruled, and that the statute of said state, approved May 29, 1879, be declared void, in so far as it requires *all* and every regular passenger train to stop a sufficient length of time to receive and let off passengers at *every* county seat, and in so far as such Act is construed by said court to require *all* interstate regular mail and passenger trains to stop in their journey across the states, and turn off from such direct interstate line and go to any depot not located on such direct line before proceeding upon their interstate journey to destination.

JAMES FENTRESS,
Of Counsel for Appellant.

Office Supreme Court U. S.
FILED.
MAR 30 1896
JAMES H. MCKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 217.

ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. W. N. BUTLER, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Brief of John M. Lansden and Angus Leek, Attorneys for Defendant in Error.

THE CITIZEN COMPANY, PRINTERS, CAIRO, ILL.

IN THE

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We have not seen the brief of the plaintiff in error, but shall assume that it contains a full and correct statement of the case.

There is but one assignment of error, and that relates to the question of the right of the legislature of a State to enact a law requiring railroad companies to stop all of their regular passenger trains at their stations in county seats of counties through which they pass.

No recital of the facts of the case, as they appear in the record, will develop any other question that may now be availed of, than that just stated. For, if the statute to which objection is made emanates from the police power of the State or is merely a police regulation, it is immaterial whether the trains upon which it may be said to operate run from points to points within the State or from points within to points without the State. The fact that in the one case the jurisdiction of this Court could not be invoked makes no difference. If the enactment may be fairly held to be an exercise of the police power, all distinctions or differences between companies or their trains, so far as interstate commerce is concerned, become unimportant.

It seems, therefore, that no other question is presented than that of the validity of this statute as a police regulation. To speak with some accuracy, the question is not, is the statute valid, but is it reasonably clear that it is invalid. This statute, sustained by the supreme court of the State, in 1882, 1887 and, in this case, in 1892, and, so far as we have any knowledge, conformed to and observed by every railroad company in the State since its enactment sixteen years ago, will not now be set aside and annulled by this Court unless it appears that the legislature and courts of the State have clearly been in error.

I

THE ASSIGNMENTS OF ERROR.—RECORD, 130.

We have said there is but one assignment of error. The two found on page 130, of the record, amount to one and the same assignment, namely, that the statute in question is invalid. The first one of the two says that the supreme court of the State erred in sustaining the demurrer to the 1st, 5th, 6th, and 7th paragraphs of the amended answer. The first and sixth paragraphs, pp. 18, 19 and 23, contain nothing relating to the question before this court. The fifth paragraph, pp. 19 to 23, contains a recital of facts relating to the creation of the Illinois Central Railroad Company, the location and construction of its road, the government land grant of Sept. 20 1850, in aid of the road's construction. The seventh paragraph, pp. 23 to 26, is perhaps better as an argument than it is as a pleading. It is not greatly unlike the 5th paragraph. All we need now say about the 5th, 6th and 7th paragraphs, of the amended answer, is, that, instead of attacking the statute directly, they set forth the reasons which were supposed to exempt the plaintiff in error from the operation of the statute. Indeed, the brief filed by counsel for the company, in the supreme court of the State, made but two points which in anywise relate to the question now before the Court. One was this:—

"The fast mail train does not come within the purpose and intent, and legal effect of the proviso of section 88, R. S. of 1889." [Record, 116, Opinion of court, point 3.]

The other point was this:—

"The enforcement of the proviso of said section 88, to the extent of compelling appellant to operate the south bound fast mail train down into Cairo, would be in conflict with acts of congress, and would be in violation of the Federal Constitution." [Record, 118, Opinion of court, point 4.]

Neither of these points presents a Federal question. They do not go to the validity of the statute, but only to its construction or application.

The statute was said to be good, generally, but bad when applied to the facts of this case. It is, or was, urged that while all regular passenger trains may be required to stop when they reach the stations in county seats, *through which they pass*, they may not be required to proceed as far as the stations, if it is desired to have them turned aside, to go elsewhere, before reaching the stations.

The supreme court of the State has not only held that the statute is valid, but it has also held that it applies to all regular passenger trains of the company that come into Cairo, whether on the bridge or on the surface tracks of the company, the same precisely as it applies to its trains which pass through the county seats of Kankakee, Paxton, Tuscola and Effingham. Indeed, as we have before remarked, the chief question in the State courts was whether the statute applied to the company's trains at Cairo or not.

The question, therefore, in this Court is not how the statute ought to be construed or whether it applies to the company's trains that came to Cairo, but is it valid

as to its trains which pass through the above named county seats or any other county seat between the terminal points of the road in Illinois. This Court has no jurisdiction to construe the statute. If the statute is valid, its construction, or application to particular cases, is for the State courts. *Commercial Bank of Cincinnati v. Buckingham, 5 How. 317; Baltimore & Potomac R. R. Co. v. Hopkins, 130 U. S. 210; L., N. O. & T. Ry. Co. v. Mississippi, 133 U. S. 587; Glenn v. Garth, 147 U. S. 360; Powell v. Supervisors of Brunswick Co., 150 U. S. 433; Baltimore Traction Co. v. Baltimore Belt R. R. Co., 151 U. S. 137.*

But let us see whether the State courts were right in holding that the statute applied to the company's trains which came within the city.

II

THE APPLICATION OF THE STATUTE.

The company was required to make and did make Cairo the southern terminus of its road. It established its station or depot on block one (1), at the intersection of Ohio Levee street and Second street, in the extreme southern part of the city. It has never had to this day, now 40 years, any other passenger station or depot in Cairo. From 1855, when the road was completed, to 1889, when it and its southern lessor built the bridge two miles above this station, a period of 34 years, the company ran and operated all of its passenger trains to and from this station. [See the petition for the writ of mandamus for a statement of these facts, which have not been disputed.]

The Illinois approach to the bridge is about one mile and a quarter long, and the foot of the same is about 3 1-4 miles from the said passenger station and about three-fifths (3-5) of a mile north of the city limits. Trains go upon the bridge and running 3-5 of a mile reach and come within the city limits, where the bridge is 20 feet above the natural surface of the ground, and, passing on within the city for the distance of almost (10-11) a mile, reach the Ohio River, where the bridge is about 65 feet above the ground.

Now, it is urged that so far as this statute is concerned, the company is not required to run any of its passenger trains south of the foot of this approach, for the reason that when there they are not within the limits of the county seat, and therefore not within the operation of the statute. The argument is that all trains that do not go to or pass the stations in county seats cannot stop at such stations and that to such trains the statute does not apply; and further, that all trains which go on the bridge without the city are, when on that part of the bridge which is within the city, really without the city. It is claimed that the court has no power, under this statute, to compel the company to run its trains down to the station, 3 1-4 miles from the foot of the approach, although all of them have to come within the city if they go south of the foot of the approach.

In this view, there is no distinction between trains. They stand at the foot of the bridge approach beyond the city and beyond the reach of the statute, whether they be fast mail, limited, vestibuled, or local passenger trains. All of them may go on southward, over the bridge, and whatever passenger train service Cairo may need the same may be supplied by a kind of local train *plying* between the station in the city and Bridge Junc-

tion, three and a quarter miles apart. For two or three years after the bridge was completed, this short train ran between the station and *Mounds*, 9 miles distant, to make connection with the fast mail train; but a month or two before the trial in the State circuit court a change was made and the two trains met at Bridge Junction, and that arrangement has continued to this time, and said fast mail train, held by the supreme court of the State to be a regular passenger train, has never, since it was put on the road in July, 1890, more than five years ago, run to the company's station in Cairo or south of Bridge Junction except on the bridge.

Now, it is said there is no law of Illinois that will prevent this train from being so run. But it must be observed that it is not because it is a fast mail train or that it is run between Chicago and New Orleans under a special arrangement with the postal department of the government, nor because of particular provisions in the act of Sept. 20, 1850 or of Feb. 10, 1851, but because it is not intended that the train should run to or pass the station in the city and is never within the city except when on the bridge. All of the company's regular passenger trains that come to Cairo or its vicinity were mail trains, and about the only difference between any of them, so far as carrying the mail was concerned, was that one was called a *fast* mail train.

We have presented this matter at some length, to show that the principle or right contended for is in no wise dependant upon the nature, kind, equipment or speed of the company's trains, except that they must be *regular* passenger trains. The State courts held that the fast mail train was a regular passenger train, and we can hardly go into that question now. It is not supposed to be a Federal question.

This company, having a continuous line of road from Chicago to New Orleans, therefore, claims that this statute does not apply to any of its regular passenger trains which come from the north or the south, although every one of them comes within the city. It is not required to run any of them to or to stop any of them at its station in the city.

For 34 years, from 1855 to 1889, it ran all of its regular passenger trains down to and stopped them at the said station. Cairo was made the legal southern terminus of the road. The actual terminus was at this station in the extreme southern part of the city or two or three hundred yards further south, near the junction of the levees on the two rivers. This was its legal terminus, and the company made it, by 34 years of uniform, and unvarying action and management, its actual terminus.

These facts should amount to something; but with the company they seem to amount to nothing; for having acquired, a few years ago, a line from East Cairo in Kentucky, to New Orleans, it and its lessor build the bridge over the Ohio River two miles above its station, turns its long Illinois approach northward to a point beyond the limits of the city or county seat, and at once announces its exemption from the obligation of its charter as to the southern terminus of its road and from the operation of the statute of the State requiring all regular passenger trains to stop at county seats.

It is, therefore, apparent that the real claim and contention of the company is, that while Cairo is a county seat it is also a terminal station, and that none of its pas-

senger trains do or can run by or beyond the station; that it cannot violate the statute by running its passenger trains by or beyond the station without stopping, the only cases to which the statute applies; that the statute does not require it to stop its regular passenger trains at the station because, it must stop them there if it runs them there or that far; that "the purpose and intent, and legal effect of the proviso" is to require regular passenger trains to be stopped at stations in county seats only in those cases where the trains might and the tracks do, run on by or beyond the stations and through the county seat town or city; that the statute relates solely to the stopping of the train; that it requires nothing of the train but that it shall be stopped; that it says nothing about running the train a foot, yard, rod or mile or any distance, and cannot, therefore, in any case, either by implication or otherwise, require the train to be run to the station; that the statute is operative only when and not until the train reaches the station and may go on by or beyond it toward its ultimate destination; and, lastly, that if the railroad company, in the management of its business or the operation of its railroad, choose to stop its regular passenger trains short of the station, and turn them aside, over a bridge or trestle or through a tunnel or around the station, it may do so and not violate the statute, because the statute does not require the trains to be run to the station and that the obligation to stop, the only obligation, arises only after the trains have reached the station.

This is, substantially, the argument of counsel to show that the fast mail train "does not come within the purpose and intent, aad legal effect of the proviso of section 88 of R. S. of 1889."

But will it be conceded that the courts would interfere to prevent a manifest attempt at an *evasion* of the statute? How could they prevent the success of such an attempt if they could not compel the train to be run to the station from the point at which it was sought to turn it aside? May the train avoid stopping at the station by keeping away from it or going around it or over or under it and yet be said not to evade the statute?

It was, of course, the prime object of the statute to secure the stoppage of regular passenger trains at railroad stations in county seats; and to effectually secure their stoppage there they must go there or be brought there. They must go to the station or be gotten there before they can be there stopped. The stopping of such trains at such stations implies that the trains are to be run there. The obligation to stop such trains at such stations includes the obligation to run the trains to the stations if they are run at all into the county seat town or city.

The argument of the company, as we have before stated, would exempt all railroad companies in the State from the obligations of the act as to all terminal stations which were county seats; and, therefore, Cairo can claim nothing under the act as against any railroad company which has a railroad running into the city and a passenger station at the terminus thereof.

Until the building of the bridge, no railroad train could be said to run through Cairo; but the bridge being built, the company now has a railroad running through Cairo and into Kentucky, so far as it can have or use a railroad running into another State. It runs all of its passenger trains coming into Cairo over the bridge northward and southward. Its passenger station in Cairo is

situated on the Ohio River about two miles below the place where the bridge crosses the river. The bridge was built in part by it, and on its land in Illinois. It selected the place for the bridge. It knew to what extent its building and use would require changes in the operation of its trains and that there would be a run of quite three miles from the foot of the Illinois approach to the Second street station and three miles back to same point. All these matters were fully comprehended and embraced in the company's plan for its railroad bridge.

We must insist, as we have before insisted, that the mere names of the trains cannot amount to much so far as concerns this matter of getting on the bridge and thereby keeping out of Cairo and out of the reach of this statute. If the statute can operate on the ground or on a train on a ground track, why can it not reach up a few feet and lay hold on a train that is trying to get through a city without getting in it, and bring it down and render it subject to law—law that has heretofore been supposed to operate in all directions and to all extents, above and below, within its lateral boundaries? Is the arm of the law so short that it cannot reach up to this train on the bridge or reach out to it in the *uninhabited* parts of the city and bring it into the inhabited parts thereof and to its own self selected station to which all of its passenger trains have been run for 34 years?

The south bound fast mail train is one regular passenger train, the north bound fast mail train is another regular passenger train, the north and south bound vestibule trains are two other regular passenger trains, and there are still other regular passenger trains that come to Cairo, or come into Cairo, on the bridge or on the ground tracks, but all of them come and must come into

Cairo either on the bridge or on the ground tracks, and if one, *then all*, can be run over or across the bridge and thus be kept out of the city. All north bound trains run over the bridge and are never in the city according to this theory; and the south bound trains may run over the bridge, or may, if the company chooses, be run down into Cairo on the ground tracks; but it is at the option of the company, so far as this statute is concerned, as to whether it will run one, two or none into the city or down to said station.

It is no reply to say that resort may be had to the courts for the exercise of its common law powers to compel the company to run into Cairo and down to the station a sufficient number of trains to accommodate the business and wants of the city and its inhabitants. We are discussing the statute and especially the extent of its operation, and are trying to rescue it from the narrow limits into which the company's great steel bridge and other kindred corporate circumstances are pressing.

Cairo has always been and now is, in law at least, the southern terminus of this railroad; but the present claim and method of operation make it a mere way station, two or three miles off from the main line, of which the bridge forms a part; and under the law the contention is, the company is only required to send down or send out to the Cairo station only such trains as may be clearly shown to be absolutely necessary to the wants of the city, *and the statute is a dead letter.*

The number of trains and train service may be entirely sufficient now, under the exigencies of litigation; but let the statute be declared by the courts to be inapplicable to the company's trains and its bridge at

this point or place, and how long will it be before the other fast mail train, the north bound fast mail train, will be run just as it was run for three months after it was first put on, that is, over the bridge and on through Cairo, without stopping anywhere at all withing 9 miles of Cairo? And then the south bound vestibule train which makes a little better time between Chicago and New Orleans than the said south bound fast mail train, may be run on over the bridge on the claim and theory, now expressly set up for the fast mail train, that it is necessary to save the 3 1-4 miles run down to the Cairo station and back. And so on with the other trains, at the company's pleasure; and in their places, or in the places of some one, two or more of them, we would be given the little short one or two car train to run from the station to Bridge Junction and back, or, as was done by the company until about the time of the trial in the circuit court, to run out to Mounds, 9 miles from said station, and then back to the station again. And this was the excellent train service furnished by the company for connection with its main line and with this fast mail train, at the Mounds, for a year and nine or ten months, and then at Bridge Junction for two or three months before the trial. The point of transfer was at the Mounds, 9 miles from Cairo, until near the time of the trial, when it was moved southward, under the influence of the suit, to Bridge Junction. Should this suit or action fail, how long will it be before we may find the point of transfer removed back to where it was maintained for more than 20 months; and how long will it be, should this action fail, before we may find other regular passenger trains, south and north bound, running over this bridge and through Cairo without stopping at all at any point or place within nine miles of Cairo; and Cairo's excellent train service may

then be just what it has always been in respect to this south bound fast mail train, namely, short trains of one or two cars, run out and in, heads or tails first as the convenience of the company required, to meet the *through* trains on the *main* line at Mounds nine miles distant.

This is no theory. It was the condition of things, real and actual, and explicitly shown by the record, as to the operation and management of this south bound fast mail train for well nigh two whole years. It was the condition of things, real and actual, as shown by the record, as to the other and north bound fast mail train for several months after it had been put on.

These two trains furnish us the best possible illustrations of what may be done with the other regular trains, in running them through the city, although on the bridge and stopping them at no point nearer Cairo than Mounds, and, *also*, as to how the people of Cairo and the traveling public generally will get to and from these through trains on the main line at Mounds. What the company may or can do or has done, with these two specimen trains, so to speak of them, it may, beyond all kind of question, do with all its other regular passenger trains which come to Cairo.

It will not do to say the company will not do this. We say, judge it by what it has done and is still doing. The south bound fast mail train is not greatly important in and of itself and this action might not have been brought at all for and on its sole account; but that train and what has been done with it signifies, in our judgment, great danger and peril to the interest of the city of Cairo. The running of the two trains through Cairo without stopping, shortly after the bridge was comple-

ted, was fair warning to all persons concerned as to what might be expected. The two trains meant three, four and all trains; and had nothing been done to prevent or change this action of the company until a number of years had elapsed, acquiescense would have been urged as a bar to relief.

We think the statute applies, in letter and in spirit; but the letter sometimes kills; the spirit always makes alive. The conveniences or needs of the company cannot be allowed to control. Evasions must not be allowed to succeed. Cairo is a county seat and the company has had, for 34 years, its regular self-chosen passenger station in the city, and whether we call it or not as does the company, *the old station*, it has not now and never has had any other or different station, and to this station it has run and stopped all its regular passenger trains which came to Cairo for and during that long period of time, until the erection of the said bridge; and as all these trains still come into the city they should all be required to go to the station and there stop, since it is evident that the obligation to stop should not be evaded by keeping away from the station.

III

OPERATING THE RAILROAD AS A CONTINUOUS LINE.

The supreme court of the State held that the company is required to operate its road as a continuous line. See Opinion of Court, Record, pp. 117 and 118. The authorities cited in the opinion fully sustain the holding of the court. It is true, that if the decision can be

sustained on this ground this Court cannot consider the question of the validity or construction of the statute in question; but we urge this point irrespective of its effect on the question of jurisdiction.

Cairo is the southern terminus of the company's railroad. The company has no right to treat it as on some other road or as on a side or spur track, and run down or out to it only such cars or trains as it chooses. It cannot make Mounds the southern terminus of the road and maintain only a nominal connection with the legal and actual terminus. We do not say that this is now being done in respect to the operation of the company's passenger trains, but we do say that what is being done tends clearly in that direction. The erection of the bridge may have rendered it desirable for the company to change or re-arrange the whole matter of the operation of its trains at or near the southern end of the road, and to make Mounds the point for the arrival and departure of all trains coming southward on the southern division of the road in Illinois and going northward on the Tennessee or Kentucky division thereof. And all such south and north bound trains would go to Mounds as their point of destination, and such passengers, cars or piece freight as were destined for Cairo would be sent down to Cairo from Mounds precisely as if it were on a short branch road, 9 miles distant from Mounds.

Sending up the short train or trains from Cairo to meet or connect with trains arriving at Mounds from the north and arriving there from the south, *running through Cairo* to reach Mounds, would be anything but operating the road as a continuous line, but rather as two roads, the Cairo road being a short road, of the length

of 9 miles, and connecting with the other road at Mounds, precisely as does the Mound City Railroad, 3 miles long, running from Mounds out to Mound City, on the Ohio River, the county seat of Pulaski county.

While the legislature, in the enactment of laws, and the courts, in construing and applying them, will facilitate the connection of railroads with each other, they will not allow the interests of the people and of the towns and cities of the State to be sacrificed for the benefit of companies whose supposed wants arise out of their operations in other States, or arise out of matters and things which have no connection with their rights and powers as given in their respective charters in this State.

In support of our position that the company is required to operate its railroad as one continuous line, we cite the following important cases: *Union Pacific R. R. Co. v. Hall*, 91 U. S. 343; *United States v. Union Pacific R. R. Co.*, 4 Dill. 478; *The People v. L. & N. R. R. Co.*, 120 Ill. 48; *O. & M. R'y Co. v. The People*, 120 Ill. 200; *C. & A. R. R. Co. v. Suffern*, 129 Ill. 274-286; *State v. Hartford & N. H. R R. Co.* 29 Conn. 538.

In the first of the above cases the attempt was made, as here, to meet the requirements of the law by the use of short trains for transfer purposes. Such also was the attempt in the McLeansboro case, 120 Ill. 48, which seems to meet fully and cover every material objection urged in this case, on its merits. It answers, completely, the objection that the statute extends only to the matter of stopping trains which may run by or pass beyond stations. It, also, effectually disposes of the claim that short trains may be resorted to for transfer purposes.

In *Brownell v. Old Colony R. R. Co.* decided by the supreme court of Massachusetts June 19th, 1895, 41 N. E. Reporter, 107, we find this language of the court:--

"The first question which we have to determine is, whether this statute is within the legislative power; that is to say, whether a railroad company, which runs a ferry as a part of its line, and which is operating the rest of the line, can discontinue the ferry, and refuse to obey a legislative requirement to operate it. A railroad company has by no means an absolute power to determine what parts of its line it will operate. Its franchises are granted for the public good, and in exercising them it is largely subject to the control and direction of the legislature. Either by virtue of the police power or of the reserved power to alter charters, many acts may be required which involve expense, and which a railroad corporation, or other corporation to which like rules would apply, would not, if left to itself, undertake. Numerous illustrations of this are found in the decisions of this court as well as in those elsewhere. * * * * * * * * * The present case is merely an instance of compelling a railroad company to operate its entire line."

The judgment of the State court may be well sustained on the broad ground that the company was and is required to operate its railroad in Illinois as a continuous line. The State supreme court in fact so held; and while a Federal question may have, also, been involved and decided against the company, this court will let the judgment stand, irrespective of the Federal question. *Brown v. Atwell*, 92 U. S. 327; *Johnson v. Risk*,

137 U. S. 300; *Beaty v. Benton, 135 U. S. 234*, and cases therein cited; *Beaupre v. Noyes 138 U. S. 397-402*; *Bolles v. Eustis 150 U. S. 361; Connecticut v. Woodruff 153 U. S. 689.*

THE POLICE POWER OF THE STATE.

If this court holds that the validity of the statute in question, and *not* its construction or application, was put in issue in the State court, and that the decision of that court cannot be sustained on any other ground than that of the validity of the statute, we will endeavor to show that its decision was right on the question of its validity.

In the eleventh article of the Constitution of 1870, of Illinois, there are a number of provisions which may be properly called police regulations. They require railroad companies, doing business in the State, to keep offices therein for the transaction of business; also, to report annually, under oath, in regard to various matters, to the auditor of State. Their rolling stock is made personal property. They may not consolidate with parallel or competing lines. Their roads are declared to be public highways, free to all persons for the transportation of their persons and property, *under such regulations* as may be prescribed by law. They may not issue stock except for money or property actually received. They are made subject to the exercise of the right of eminent domain, the same as individuals. The 13th section of said article requires the legislature to pass laws *to correct abuses* and to prevent unjust discrimination, &c.

The act, containing the section so earnestly objected to, is entitled:

"*An act in relation to fencing and operating railroads, approved March 31st, 1874.*"

This act contains, in separate sections, a large number of provisions or regulations of a similar nature to the one in question. We will note the matters to which they relate.

1st. Railroad companies shall fence their tracks. (Sec. 1).

2nd. They shall keep their rights of way free from dead grass, dry weeds, etc. (Sec. 1 1-2).

3d. They shall maintain "railroad crossing" signs at highway crossings. (Sec. 5).

4th. They shall place on each locomotive a bell and a whistle, and shall ring the one or sound the other continuously for the distance of 80 rods before reaching highway crossings. (Sec. 6.)

5th. Their engineers shall not *start* trains at stations or within cities, towns or villages, without first ringing the bell or sounding the whistle a reasonable length of time before starting. (Sec. 7).

6th. They shall construct and maintain all highway and street crossings and the approaches thereto within their rights of way. (Sec. 8).

7th. They shall stop their trains within 800 feet of all railroad crossings and swing or draw bridges. (Sec. 12).

8th. They shall not haul freight cars in the rear of passenger cars. (Sec. 21).

9th. They shall *furnish, start and run* cars for the transportation of persons and property. (Sec. 22).

10th. They shall build and maintain depots for the comfort of passengers and the protection of shippers of freight, at all towns or villages on their lines having a population of five hundred or more. (Act of May 23, 1877).

11th. They shall keep their depots or station houses open and well warmed and lighted. (Sec. 22).

12th. They shall limit the speed of their trains to the requirements of the ordinances of the cities, towns and villages on their lines, the speed not to be restricted to less than ten miles an hour for passenger trains nor six miles an hour for all other trains. (Sec. 24).

13th. Section 25, of the said act of March 31, 1874, is section 88 of the Revised Statutes, and is the section in question, as amended in 1879.

"Every railroad corporation shall cause its passenger trains to stop upon its arrival at each station, advertised by such corporation as a place for receiving and discharging passengers, upon and from such trains, a sufficient length of time to receive and let off such passengers with safety: Provided, all regular passenger trains shall stop a sufficient length of time at the railroad station of county seats, to receive and let off passengers with safety."

14th. They shall have on all passenger trains at least one brakeman for every two cars, unless the brakes are operated by power from the locomotive. (Sec. 26).

15th. Section 27 relates to brakemen and brakes on freight trains.

16th. Section 32 requires conductors, baggagemen, brakemen and other persons enployed on passenger trains to wear badges, &c.

17th. Section 34 requires each passenger car to be furnished with an ax, hand-saw and sledge hammer.

18th. Section 34 1-2 relates to couplings.

19th. Section 35 relates to flagmen at street crossings.

Besides these, there is a railroad commission, and regulations in regard to rates, unjust discrimination, reports of accidents, and a large number of other requirements found in different statutes, which are police regulations only.

These regulations, so above set forth, are not only numerous, but many of them have a very wide and important operation; but when we consider the relations the railroad companies of the country bear to the public at large and their vast operations, power and influence, can we say such regulations are unjust or that they materially impair their rights and privileges under the laws of the land?

We shall enter into no discussion of the extent of the police power of the States, nor of the limitations upon that power, if any, growing out of the fact that

the Federal Government possesses certain paramount powers in regard to inter-state commerce. We shall, however, cite a number of important authorities and quote from them at considerable length.

This statute has been before the supreme court of the State three times, including the present case; namely, in the *Chicago and Alton case*, 105 Ill. 657, (1882). the *Louisville and Nashville case*, 120 Ill. 48, (1887), and the *Illinois Central case*, 143 Ill. 434, (1892), now before the court.

In the case of the *Chicago and Alton Railroad Company v. The People*, 105 Ill. 657, the court says:

"But it is contended that if the act is broad enough to include the train in question, then its effect is a regulation of commerce between the States, and hence is inhibited by the Constitution of the United States. The act does not undertake to regulate commerce between the States. It imposes no restriction upon the introduction or transportation of any article of commerce whatever. A State regulation which requires all passenger trains to stop at railroad crossings, at draw-bridges, and requires the speed of trains to be reduced when running through incorporated towns and cities, has never, so far as we are informed, been regarded as a regulation of commerce, although the line of railroad thus regulated may pass through several States. And if the legislature has the right to require all trains to stop at a railroad crossing, and to require the speed of all trains to be reduced when running through a city or incorporated town, on the same principle, and for a like reason, it has the power to require all regular trains to stop at the station in all county seats. A law of this character is but a proper exercise of the police power of the State,

which has always been upheld and sustained by the courts."

"This railroad company accepted its charter upon the implied condition that its franchise would be exercised subject to the power of the State to impose such reasonable regulations as the comfort, safety or welfare of society might require. Numerous cases might be cited in support of this principle. In *Galena and Chicago Union R. R. Co. v. Loomis*, 13 Ill. 548, a law requiring a bell or whistle to be attached to each engine upon a railroad was sustained, and the court held that 'the legislature had the power, by the enactment of general laws, from time to time, as the public exigencies may require, to regulate corporations in the exercise of their franchises, so as to provide for the public safety.' In *Ohio and Mississippi R. R. Co. v. McClelland*, 25 Ill. 140, an act requiring all railroads then in operation to be fenced, and imposing a penalty for non-compliance, was sustained, and it was held that acts of incorporation are subordinate to general police regulations. In speaking of railroad corporations it is there said: 'They are subject to control for the general good, * * * and for that purpose the legislature may, beyond all doubt, regulate the speed of their trains, require them to place guards at bridges and other points of danger, and they may, as they have done, require the sound of a whistle or a bell at road crossings, for the safety of passengers, together with their property.' See, also, *Thorp v. R. & B. R. R. Co.*, 27 Vt. 150. A reference to other cases will not be necessary."

"If the legislature had the right, in the exercise of the police power of the State, to provide for the regulation of railroad corporations in the respects named in

the cases cited, there can be no doubt in regard to the validity of the law in question. Did the act contribute to the comfort, safety or welfare of the public? If it did, and did not deprive the company of any essential right, conferred by its charter, its passage was a proper exercise of the police power. (Cooley on Const. Lim. 577; Potter's Dwarris on Statutes, 458; *Lake View v. Rose Hill Cemetery*, 70 Ill. 191.) In the enactment of the law requiring all regular passenger trains to stop at county seats, the legislature, no doubt, had in view the great benefit the public would derive in the increased facilities for reaching the county seat, to aid in the dispatch of business in the courts, in the prompt arrest and prosecution of criminals who might be indicted in the courts, in the attendance of witnesses, grand and petit jurors,—indeed, the prompt and efficient transaction of all business in the courts held at the county seat, and the facility for the examination of the records on the sale and conveyance of property. These and various other matters pertaining to the welfare of the public doubtless led to the enactment of the law, and in its enactment we are fully satisfied that the legislature transcended none of its powers, nor did it violate any chartered right of the railroad company."

In *The People v. I. & N. R. R. Co.* 120 Ill. 48, the writ of mandamus, as in the case at bar, was awarded to compel the railroad company to run its passenger trains to its station in McLeansboro, a county seat. The depot or station which had been used as such for some thirteen years was abandoned and a new one was established outside of the corporate limits, to which an accommodation train was run from the county seat twice a day to connect with passing trains; and it was held that it was the imperative duty of the company to

stop all of its regular passenger trains at the old depot, and that such duty was enjoined by the 88th section of chapter 114 of the Revised Statutes of Illinois. We quote from the case as follows:—

"The Evansville and Southern Illinois Railroad Company was authorized to build a road *from* McLeansboro to the State line, on the Big Wabash river, and nowhere else. After having built the road, it was bound to run its trains over its entire line, in such a manner as to afford reasonable facilities for the prompt and efficient transaction of such legitimate business as should be offerred it on any and every part of its road. The duty to thus operate the road is just as binding upon the defendant as it was on the original company. The fact that through business may be more renumerative than way business, affords no justification for neglecting the way business. Nor can the company abandon its road, or any part of it, without rendering its franchise liable to forfeiture. These obligations and duties which attached to the company that built the road, as just observed, apply with equal force and stringency to the defendant. The former had a large discretion in locating the road; yet, as McLeansboro is made a terminal point by its charter, it was imperative that the road should extend to that town. Whether some distance in the town or nearly to it, whether the approach or entry was to be made from the north or south side, or from some other point, were questions purely within the discretion of the company. That discretion has been exercised, and those questions finally and irrevocably settled. This the company did by the erection of a depot in the town, the building of its tracks to it, and the stopping of all its trains there, with a trifling exception, for a period of some thirteen years. During this time, business inter-

ests have doubtless grown up and shaped themselves with reference to the location as originally fixed by the company. Property has, no doubt, been bought and sold upon the faith of the company's action, and it may well be assumed its value is affected more or less by it.

"That a railway company, after having fixed the terminal point of its road in a town or city, has no power to afterwards change the location, is fully settled by the authorities. In Pierce on Railroads, (pp. 254, 255) the author states the law very clearly on this subject. It is there said: "The power of the company to determine its location, when once exercised, is exhausted. It may have a discretion as to its termini, or the selection of its intermediate points, or its route between certain fixed points; but, having exercised the discretion, it can not change the location without legislative authority. This is in accordance with the ancient rule of the common law, that 'if a man once determine his election, it shall be determined forever.'"

"As the charter required the road to be built to McLeansboro, and that having been done and a depot established at the end of its line in the town, the defendant has no discretion as to which of its passenger trains it will stop there and which it will not, as it would have, within certain reasonable limitations, if McLeansboro were not a county seat. As it is, it is the imperative duty of the company to stop all of its regular passenger trains there. This is expressly enjoined by the 88th section of chapter 114 of the Revised Statutes.

"That the four trains in question which daily pass over the Evansville line are "regular passenger trains," within the meaning of the statute, is conclusively settled by the case of *Chicago and Alton Railroad Co. v. The*

People, 105 Ill. 657. The fact that all these trains may stop at the new depot, a quarter of a mile beyond the corporate limits of the town, does not relieve the company either from its common law or statutory duties in this respect. For this purpose the stopping of its trains miles distant from the town would be equally available. Unless it can be said, as matter of law, that the stopping of a train a quarter of a mile from a place is stopping it at the place, there is nothing in the suggestion. The very statement of the proposition involves an absurdity so gross in its character as to forbid serious consideration."

In *Sherlock v. Alling*, 93 U. S. 99, it said:—

"In conferring upon congress the regulation of commerce, it was never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and the persons engaged in it without constituting a regulation of it within the meaning of the constitution. * * * It may be said, generally, that legislation of a State not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or inter state, or in any other pursuit."

From the well known case of *Smith v. Alabama*, 124 U. S. 465, wherein the act complained of required locomotive engineers to procure licenses, we quote two or three paragraphs:—

"There are many cases where the acknowledged powers of a State may be exerted and applied in such a manner as to affect foreign or inter-state commerce without being intended to operate as commercial regulations. If their operation and application in such cases regulate such commerce, so as to conflict with the regulation of the same subject by congress, either as expressed in positive laws or implied from the absence of legislation, such legislation on the part of the State, to the extent of that conflict, must be regarded as annulled. To draw the line of interference between the two fields of jurisdiction, and to define and declare the instances of unconstitutional encroachment, is a judicial question often of much difficulty, the solution of which, perhaps, is not to be found in any single and exact rule of decision. Some general lines of discrimination, however, have been drawn in varied and numerous decisions of this court. It has been uniformly held, for example, that the States cannot by legislation place burdens upon commerce with foreign nations or among the several States. But, upon an examination of the cases in which they were rendered, it will be found that the legislation adjudged invalid * * * operated directly upon commerce.

"It is to be remembered that railroads are not natural highways of trade and commerce. They are artificial creations; they are constructed within the territorial limits of a State, and by the authority of its laws, and ordinarily by means of corporations exercising their franchises by limited grants from the State. The places where they may be located, and the plans according to which they must be constructed are prescribed by the legislation of the State. Their operation requires the use of instruments and agencies attended

with special risks and dangers, the proper management of which involves peculiar knowledge, training, skill and care. The safety of the public in person and property demands the use of specific guards and precautions. The width of the guage, the character of the grades, the mode of crossing streams by culverts and bridges, the kind of cuts and tunnels, the mode of crossing other highways, the placing of watchmen and signals at points of special danger, the rate of speed at stations and through villages, towns and cities, are all matters naturally and peculiarly within the provisions of that law from the authority of which these modern highways of commerce derive their existence. The rules prescribed for their construction and for their management and operation designed to protect persons and property, otherwise endangered by their use, are strictly within the limits of the local law. They are not *per se* regulations of commerce; it is only when they operate as such in the circumstances of their application, and conflict with the expressed or presumed will of congress exerted on the same subject, that they can be required to give way to the supreme authority of the constitution.

"In conclusion we find, therefore: first, that the statute of Alabama, the validity of which is under consideration, is not, considered in its own nature, a regulation of inter-state commerce, even when applied as in the case under consideration; secondly, that it is properly an act of legislation within the scope of the admitted power reserved to the States to regulate the relative rights and duties of persons being and acting within its territorial jurisdiction, intended to operate so as to secure for the public safety of person and property; and, thirdly, that, so far as it affects transactions of

commerce among the States, it does so only indirectly, incidentally and remotely, and not so as to burden and impede them; and, in the particulars in which it touches those transactions at all, it is not in conflict with any express enactment of congress on the subject, nor contrary to any intention of congress to be presumed from its silence.—For these reasons, we hold this statute, so far as it is alleged to contravene the Constitution of the United States, to be a valid law."

In the case of *Stone v. Farmers Loan and Trust Company*, 116 U. S. 307, the court says:

"There can be no doubt that each of the States through which the Mobile and Ohio Railroad passes incorporated the company for the purpose of securing the construction of a railroad from Mobile, through Alabama, Mississippi, Tennessee and Kentucky, to some point near the mouth of the Ohio River, where it would connect with another roilroad to the lakes, and thus form a continuous line of inter-state communication between the Gulf of Mexico, in the south, and the Great Lakes, in the north. It is equally certain that congress aided in the construction of parts of this line of road so as to establish such a route of travel and transportation. But it is none the less true that the corporation created by each State is, for all the purposes of local government, a domestic corporation, and that its railroad within the State is a matter of domestic concern. Every person, every corporation, everything within the territorial limits of a State is, while there, subject to the constitutional authority of the State Government. Clearly, under this rule Mississippi may govern this corporation, as it does all domestic corporations, in respect to every act and everything within the State which is the lawful subject of State Government. It may, beyond all question,

by the settled rule of decision in this court, regulate freights and fares for business done exclusively within the State, and it would seem to be a matter of domestic concern to prevent the company from discriminating against persons and places in Mississippi. So it may make all needful regulations of a police character for the government of the company while operating its road in that jurisdiction. In this way it may certainly require the company to fence so much of its road as lies within the State; to stop its trains at railroad crossings; to slacken speed while running through a crowded thoroughfare; to post its tariffs and time-tables at proper places; and other things of a kindred character affecting the comfort, the convenience, or the safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct of others. This company is not relieved entirely from State regulation or State control in Mississippi, simply because it has been incorporated by and is carrying on business in the other States through which its road runs. While in Mississippi it can be governed by Mississippi in respect to all things which have not been placed by the constitution of the United States within the exclusive jurisdiction of congress; that is to say, using the language of this court in *Cardwell v. Bridge Co.*, 113 U. S. 210, 'when the subjects on which it is exerted are national in their character, and admit and require uniformity of regulations affecting all of the States alike.' Under this rule, nothing can be done by the government of Mississippi which will operate as a burden on the interstate business of the company or impair the usefulness of its facilities for inter-state traffic. It is not enough to prevent the State from acting, that the road in Mississippi is used in aid of inter-state commerce. Legislation of this kind to be unconstitutional must be such as will necessarily

amount to or operate as a regulation of business without the State as well as within." * * *

In the case of the *Louisville and Nashville Railroad Company v. State of Mississippi*, 133 U. S. 587, the Court held that a statute of the State of Mississippi which requires all railroads carrying passengers in that State to separate the white and colored passengers by providing two or more passenger cars for each train, or by dividing the passenger cars by a partition so as to secure separate accommodations for each, is not a regulation of inter-state commerce, and sustained a conviction of the defendant for a violation of the statute, notwithstanding the fact that it owned and operated a continuous line of railroad from Memphis to New Orleans.

In Charlotte, *C. & A. R. R. Co. v. Gibbes*, 142 U. S. 386, we find this language of Mr. Justice Field:

"Though railroad corporations are private corporations, as distinguished from those created for municipal and governmental purposes, their uses are public. They are formed for the convenience of the public in the transportation of persons and merchandise, and are invested, for that purpose, with special privileges. They are allowed to exercise the States' right of eminent domain, that they may appropriate for their uses the necessary property of others upon paying just compensation therefor,—a right which can only be exercised for public purposes. And they assume, by the acceptance of their charters, the obligations to transport all persons and merchandise upon like conditions and at reasonable rates; and they are authorized to charge reasonable compensation for the services they thus perform. Being the recipients of special privileges from the State, to be exercised in the interest of the public, and assuming

the obligations thus mentioned, their business is deemed affected with a public use, and to the extent of that use is subject to legislative regulation. *Banking Co. v. Smith*, 128 U. S. 174-179. That regulation may extend to all measures deemed essential, not merely to secure the safety of passengers and freight, but to promote the convenience of the public in the transaction of business with them, and to prevent abuses by extortionate charges and unjust discrimination. It may embrace a general supervision of the operation of their roads, which may be exercised by direct legislation commanding or forbidding, under severe penalties, the doing or omission of particular acts, or it may be exercised through commissioners specially appointed for that purpose. The mode or manner of regulation is a matter of legislative discretion."—See, also, *Budd v. New York*, 143 U. S. 517, and *Minneapolis & St. L. R. R. Co. v. Emmons*, 149 U. S. 364.

In *New York and New England R. R. Co. v. Town of Bristol*, 151 U. S. 556, we find this language of Mr. Chief Justice Fuller:

"The conclusions of this court have been repeatedly announced, to the effect that though railroad corporations are private corporations, as distinguished from those created for municipal and governmental purposes, their uses are public, and they are invested with the right of eminent domain, only to be exercised for public purposes; that therefore they are subject to legislative control in all respects necessary to protect the public against danger, injustice and oppression; that the State has power to exercise this control through

boards of commissioners; that there is no unjust discrimination, and no denial of the equal protection of the laws, in regulations, applicable to all railroad corporations alike; nor is there necessarily such denial, nor an infringement of the obligation of contracts, in the imposition upon them, in particular instances, of the entire expense of the performance of acts required in the public interest, in the exercise of legislative discretion; nor are they thereby deprived of property without due process of law, by statutes, under which the result is ascertained, in a mode suited to the nature of the case, and not merely arbitrary and capricious; and that the adjudication of the highest court of a State that, in such particulars, a law enacted in the exercise of the police power of the State, is valid, will not be reversed by this court on the ground of an infraction of the Constitution of the United States. *Railway Co. v. Alabama*, 128 U. S. 96; *Banking Co. v. Smith*, 128 U. S. 174; *Railway Co. v. Beckwith*, 129 U. S. 26; *Dent v. West Virginia*, 129 U. S. 114; *Railroad Co. v. Gibbes*, 142 U. S. 386; *Railroad Co. v. Emmons*, 149 U. S. 364."

In *Lawton v. Steele*, 152 U. S. 133, this Court, speaking by Mr. Justice Brewer, says:

"The extent and limits of what is known as the "police power" have been a fruitful subject of discussion in the appellate courts of nearly every state in the Union. It is universally conceded to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the State may order the destruction of a house falling to decay, or otherwise endangering the lives of passers-by;

the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars, and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of gamboling houses and places where intoxicating liquors are sold. Beyond this, however, the State may interfere wherever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests. *Barbier v. Connolly*, 113 U. S. 27; *Kidd v. Pearson*, 128 U. S. 1."

In *Plumley v. Commonwealth of Massachusetts*, 155 U. S. 461, Mr. Justice Harlan says:

"Referring to the general body of the law, from whatever source derived, existing in each State of the Union, and regulating the rights and duties of all within its jurisdiction, even those engaged in interstate commerce, this court, speaking by Mr. Justice Matthews, said in *Smith v. Alabama*, 124 U. S. 465-476, that it was in contemplation of the continued existence of this separate system of law in each State that the Constitution of the United States was framed and ordained with such legislative powers as are therein granted expressly or

by reasonable implication. It was consequently held in that case, that a State may enact laws and prescribe regulations, applicable to carriers engaged in interstate and foreign commerce, to insure the safety of persons and things liable to be affected by their acts while they were within the territorial jurisdiction of the State."

In *Commonwealth v. Eastern R. R. Co.* 103 Mass. 254, the act in question required the railroad company to erect at Knight's Crossing, in Newberry, a reasonably commodious station house at which at least two trains a day each way should stop; and the court, among other things, says:

"In respect to charters for railroads, both the legislature and the corporation act as trustees of the public interest to some extent; for the corporation is entrusted with the exercise of the right of eminent domain, which is in its nature a public right, and is not to be sacrificed to uses that are exclusively private. The private interests of the stock-holders are likely to have a controlling influence with the officers of the company, and it is important that the legislature should possess the power to prevent abuses to which this influence may lead. * * * * But independantly of the authority of those cases, it seems to us that the clause was intended to provide for such a case as the present. If the directors of a railroad were to find it for the interest of the stockholders to refuse to carry any freight or passengers except such as they might take at one end of the road and carry entirely through to the other end, and were to refuse to establish any way stations or do any way business for that reason, though the road passed for a long distance through a populous part of the State, this would be a case manifestly requiring and authoriz-

ing legislative interference under the clause in question. And on the same ground, if they refuse to provide reasonable accommodation for the people of any smaller locality, the legislature may reasonably alter and modify the discretionary power which the charter confers upon the directors, so as to make the duty to provide the accommodation absolute. Whether a reasonable ground for interference is presented in any particular case is for the legislature to determine; and their determination on this point must be conclusive."

V

HOW GREAT IS THE BURDEN OF THIS STATUTE UPON THE PLAINTIFF IN ERROR OR UPON INTERSTATE COMMERCE?

The distance from Chicago to Cairo is 365 miles. From Chicago, the company's trains run 56 miles to the first county seat, Kankakee; from thence, 47 miles, to Paxton, the next county seat; from thence, 46 miles to Tuscola, the third county seat; from thence, 50 miles to Effiingham, the fourth county seat; and from thence, 165 miles, to Cairo. In making this run of 365 miles, the company's trains have to stop four times at county seats. When they get to Cairo, a county seat, and the southern terminus of the road, they avoid stopping there by turning aside a few hundred feet beyond the city limits and run through the upper part of the city on the bridge approach.

In running the 365 miles, the trains have to slacken speed while passing through some twenty cities and villages on the line; and they have to come to

a full stop at some twenty-five main line railroad crossings of other railroad companies. So it is apparent, that the inconvenience arising from the duty to stop at stations in county seats is inconsiderable when compared to that arising from the other like duties just mentioned and of which no complaint is made.

The Court will take notice of the size of counties generally, of the fact that county seats are generally located near the centres of counties, and that railroad companies do not usually meander round through the country to reach county seats of contiguous counties.

At all of the county seats above mentioned, there are railroad crossings and the trains all stop not further than 800 feet therefrom. This it does for the safety of the traveling public; and we may well inquire why it should be thought to be burdensome on the company to require it to stop at the stations in these county seat towns and cities to receive and let off passengers with safety?

Counsel have said the fast mail train cannot run from Bridge Junction to Cairo, or to the station in Cairo, and back to Bridge Junction, and make the time between Chicago and New Orleans that is required by its contract with the postal authorities.

This looks plausible. The statute is too heavy to carry—to make the requisite speed. It is a burden on this train and therefore on interstate commerce. But this plausible claim ceases to seem plausible in the face of the fact, of record in the cause, that the company's vestibuled train runs down to the station in Cairo and there

stops 20 minutes and yet makes the distance between Chicago and New Orleans in 10 minutes less time than that made by this fast mail train. Record, 82.

But we return to what we have already urged, namely, that the objection is not to the statute as applied to trains at Kankakee, Paxton, Tuscola and Effingham, but to its application to the condition of things at Cairo, created, voluntarily, by the company, with its eyes open to the whole situation.

The burden complained of, if there is any at all, is incidental, like that attending the enforcement of all police regulations. If it in anywise affects interstate commerce, the affect is not direct or substantial but indirect and incidental only.

The company's passenger station, on said block one in Cairo, is not three hundred (300) feet distant from what is called the Union depot, at which the passenger trains of the Mobile and Ohio R. R. Co., the C. C. C. & St. L. Ry. Co., and the Iron Mountain Ry. Co. regularly stop and have stopped for years. All the Illinois trains, all the Kentucky trains and all the Missouri trains come to the one or the other of these two stations or depots; and there never has been any other passenger station in Cairo than these, on said Second street. It may be said that self interest will cause the Central to run almost all of its passenger trains down to these stations to obtain passengers. Its self interest, however, has not operated in that way on these so called fast mail passenger trains, and the citizens of Cairo prefer to have the law rather than the self interest of the company on which to rely.

VI

CONGRESS HAS TAKEN NO ACTION ON THIS SUBJECT.

Were it admitted that congress may rightfully enact laws regulating the running of interstate trains, so to call them, and therein provide how fast they may run, their rates of speed through towns and cities, when and where they should sound their whistles or ring their bells, the places at which they should stop or how often or how long, and thus supercede the police power of the States over such matters, yet it must be conceded that until congress took the matter in hand and legislated thereon, the States would have the right to enact all such reasonable rules and regulations on the subject and enforce them, until congress set them aside by enactments of its own.—*C. & N. W. R. R. Co. v. Fuller*, 84 U. S. (17 Wall.) 560; *Gulf & C. F. R. R. Co. v. Hefly & Lewis*, 158 U. S. 98.

In the former of these cases, the *Iowa* statute under consideration required all railroad companies annually to fix and post their rates of charges for the transportation of passengers and of freights, and the same was held valid as a police regulation as to railroads running through a number of States; and the court, by Mr. Justice Swayne, said:

"It is not, in the sense of the Constitution, in anywise a regulation of commerce. It is a police regulation, and as such forms a portion of the immense mass of legislation which embraces everything within the territory of a State not surrendered to the General Government,

all which can be most advantageously exercised by the States themselves. * * * "If the requirements of the statute here in question were, as contended by the counsel for the plaintiff in error, *regulations of commerce*, the question would arise, whether, regarded in the light of the authorities referred to, and of reason and principle, they are not regulations of such character as to be valid until superceded by the paramount action of congress. But as we are unanimously of the opinion that they are merely police regulations, it is unnecessary to pursue the subject."—This case is cited at some length by Mr. *Justice Brewer*, in the latter of the two above cases, and the principle announced reaffirmed.

VII

THE CAIRO BRIDGE AND THE GOVERNMENT GRANT OF SEPTEMBER 20TH, 1850.

The Illinois Central Railroad Company, after well nigh 40 years of serious meditation, concluded that the munificient grant of Sept. 20th, 1850, laid upon it the duty of building a railroad bridge over the Ohio River at Cairo. It knew that the Mobile and Ohio Railroad Company regarded itself as the favorite child of the Government so far as the grant applied to lands south of the mouth of the Ohio river, and that in *Stone v. Farmers Loan and Trust Co.* 116 U. S. 307, it had set up this grant in its behalf as one of the reasons why it should be exempted from the operaton of the Mississippi statute in relation to rates, charges, &c.

The Central sets up the same defense in this case and claims the same kind of an exemption, but with

singular infelicity; for none of its southern connections or lessors have ever claimed to have, in law or in fact, any interest in said grant; and moreover, the act making the grant is entitled, "An act granting the right of way, and making a grant of lands to the States of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile." —A bill of interpleader should be filed against these two companies to ascertain which one of them is entitled to exemptions from State control because of this grant of lands south of the Ohio River.

Neither the Illinois Central nor its southern lessor could build a whole bridge, but each could, or thought it could, build a part of a bridge and that together they could build a whole bridge if they could join the parts across the line, and they found they could do that by treating the line as an imaginary line. The Central prevailed upon its said lessor to build to the Illinois boundary, which is low water mark on the Illinois side of the river, and it, itself, built the Illinois approach at an expense of something under a half million of dollars. Its authority for this is said to be found in the acts of Feb. 12, 1855, and Feb. 25, 1867. Although this construction of those acts stretches them to very great tenuity, we remark here, once for all, that those acts and all that has been done under them, including the bridge itself, cannot absolve the company from any of its obligations as an Illinois corporation or authorize it to make Mounds, 9 miles distant, or Bridge Junction, 3 1-4 miles distant, from its Cairo station, the terminus of its railroad. Its terminus as fixed by law and 40 years of user cannot be changed or abandoned even if its acquisitions in other States might seem to make it desirable.

So much was said in the courts of the State and will

broken reed. If the State's power to regulate the company's tolls or rates is limited to State boundaries that fact is not due to the section quoted but to the clause of the constitution relating to commerce between the States.

But the suggestive inquiry is, if the State, under the police power, may regulate or restrict the company's charges for the carrying of passengers from Chicago to Cairo, wholly within the State, why should it be thought to be beyond its police power to require the company's trains carrying the passengers to stop at the few county seats on its line, in the State, a sufficient length of time to receive and let off the passengers with safety? The sufficient length of time never exceeds one minute under ordinary circumstances, nor more than two minutes including the loss in reduction of speed. The power of the State over the tolls of the companies must be far more important than the power it has exercised in requiring them to stop their regular passenger trains at county seats.

These regulations, in the form of laws, do not relate to the health of the people nor to their safety nor to their comfort, in a direct sense, as probably do most police regulations, but are intended to promote the public convenience and the general welfare, so far as they may be reasonably promoted by railroad companies whose existence is due to these self same objects of promotion. See the language of Mr. Justice Field in the *Gibbes case*, page 33 hereof. This principle, which recognizes such companies as existing quite as much for public interests as for private gain, has grown to be the law under many difficulties and against much opposition. It is now accepted on every hand, and we wonder

that it was ever otherwise. But it must be expected that to those interested in the private gain the public interests will seem exceedingly small and at times inappreciable.

This company, with more than a million dollars worth of property in Cairo exempt from local taxation of every kind, state, county, city, town, school, and other taxes, receiving the protection of the local authorities at all times and needing it more than others because of its large interests, seeks to establish, by a decision of this Court, a right, on its part, to ignore the city of Cairo, to practically abandon the southern terminus of its road in Illinois, and run all of its passenger trains over its bridge and supply or serve Cairo with a small train drawn by a locomotive, moving forward or backward, between the station in Cairo and Bridge Junction, at which latter place passengers and baggage must of course always change cars.

It will not do to say this has not been done. Take away this statute and the station in Cairo may never see any other passenger train than the one which does duty between the station and Bridge Junction. The company's *private* interests will undoubtedly control. It was never otherwise. Words implying moral obligation have never been found in the lexicons of corporations.

IX

THE OPINION OF THE SUPREME COURT OF THE STATE, Record, 110 to 122; 143 Ill. 434.

In the State courts the plaintiff in error insisted:—

1. That the *proviso* of said section 88, which was added, in 1879, to the section as it stood in the act of 1874, was not legally passed, and had never become a law.

2. That the fast mail train was not a *regular* passenger train within the meaning of the act.

3. That the act did not apply to trains that did not go to the station in Cairo, or to trains which only came within the city on the bridge.

4. That to apply the act to the fast mail train at Cairo makes it an interference with and a burden on interstate commerce.

5. That the court, in the exercise of a sound judicial discretion, should have refused to award the writ of mandamus, because the legal right to it had not been shown to be clear.

These points were fully and ably presented, but the supreme court of the State decided them all against the company.

The company's petition for a rehearing certainly left nothing further to be said against the soundness of the court's opinion; but the court, feeling entirely sat-

isfied with the view it had taken of the case, refused a rehearing of the cause, and the company now comes here on that narrow margin of its case which it supposes this Court may rightfully consider.

We think the supreme court of Illinois not only decided correctly the questions presented, but that its opinion is a very able and full presentation of the reasons for its decision.—We quote from it in regard to the operation of the road as a continuous line, and as to the concession of counsel that the statute is valid but could not be properly or legally applied to the situation at Cairo:—

"Section 2, of appellant's charter, empowered it to construct, maintain and operate a railroad "from the southern terminus of the Illinois and Michigan Canal to a point at the city of Cairo, etc." (Adams & Durham's Real Est. Stat. & Dec. of Ill. p. 1755). The selection of the point at the city, to which the road was to be constructed, was within the discretion of the company. The company fixed the corner of Second and Levee streets, or, as is claimed by its counsel, a point 950 feet south of said corner, as the terminus of its road, and built a passenger station and depot at said corner, and laid its tracks to the depot, and stopped all of its trains there from 1855 to 1890, a period of thirty-five years. The discretion, with which it was clothed as to the location of its terminus, has been exercised. As was said in *The People v. L. & N. R. R. Co. supra*, in regard to McLeansboro, so may it be said here of Cairo: "During this time, business interests have doubtless grown up and shaped themselves with reference to the location as originally fixed by the company. Property has, no doubt, been bought and sold upon the faith of the company's action,

and it may well be assumed its value is affected more or less by it."

"Where a railroad company has fixed the terminal point of its road in a town or city, it cannot afterwards change the location. (*The People v. L. & N. R. R. Co. supra*; *C. & A. R. R. Co. v. Suffern*, 129 Ill. 274). "The power of the company to determine its location, when once exercised, is exhausted. It may have a discretion as to its termini, or the selection of its intermediate points, or its route between certain fixed points; but, having exercised the discretion, it cannot change the location without legislative authority." (Pierce on Railroads, pp. 254, 255, quoted in *People v. L. & N. R. R. Co. supra.*).

"The appellant company is required by its charter to operate its road as a continuous line to the point selected and used and maintained by it as the southern terminus of its road. It cannot make Mounds Junction, or Bridge Junction, the southern terminus. It has no right to treat the legal and actual terminus at the corner of Second and Levee streets in Cairo as though its station in that city was on a side or spur track, to be visited only with such cars or trains as it sees fit to send there. The requirement of the law is not met by the use of short trains for transfer purposes. (*Union Pacific R. R. Co. v. Hall*, 91 U. S. 343; *State v. Hartford and N. H. R. R. Co.* 29 Conn. 538; *U. S. v. U. P. R. R. Co.* 4 Dill. 478; *The People v. L. & N. R. R. Co. supra; O. & M. Ry. Co. v. The People*, 120 Ill. 200; *C. & A. R. R. Co. v. Suffern, supra*). As the charter required the road to be built "to a point at the city of Cairo," and as the road was built up to a selected and designated point in said city, towit: the corner of the streets above men-

tioned, and a depot was established there at the end of the line, "the defendant has no discretion as to which of its passenger trains it will stop there and which it will not." (*The People v. L. & N. R. R. Co. supra*). It may suit the interest or convenience of a railroad company, that certain of its trains, destined for distant points in other States and known as "through trains," should follow a new route and pass around or away from one of its long established depots; but such a mode of operating the "through trains," where the depot so established is both the railroad station of a county seat and the legal terminus of the original road in this State, amounts not only to an evasion of the proviso to section 88, but, virtually and in effect, to an abandonment of a part of the company's road. It was said in *The People ex rel. v. L. & N. R. R. Co*, *supra*: "The fact that through business may be more remunerative than way business affords no justification for neglecting the way business. Nor can the company abandon its road, or any part of it, without rendering its franchises liable to forfeiture."

* * * * * * * * * *

"Counsel for appellant concede, that section 88 is not a regulation of interstate commerce, if it be construed as merely requiring regular passenger trains, which pass through county seats, to stop long enough at the stations there to receive and let off passengers with safety. But it is claimed that the section is a violation of the federal constitution and an interference with the federal government, if it be so enforced as to require a fast train, carrying the United States mail and on its way to New Orleans through several States south of the Ohio River,

to go to the regular passenger station at Cairo, and stop there long enough to receive and let off passengers with safety, instead of proceeding over the Ohio River bridge without going to said station."

We think we have shown that this Court is without jurisdiction, and that the writ of error should be dismissed: first, because it is manifest that the judgment of the State court is based on two independent grounds, namely, the validity of the statute and the duty of the company to operate its road as a continuous line; and, second, that it clearly appears, notwithstanding the present contention and the certificate of the Chief Justice of the State supreme court, the construction and not the validity of the statute was put in issue and insisted upon, in the State courts, by plaintiff in error.

Should the Court, however, not take this view of the matter, we respectfully insist that the statute in question is good and valid, and that the judgment of the State court should be affirmed.

JOHN M. LANSDEN

and ANGUS LEEK,

Attorneys for Defendant in Error.

RE-STATEMENT OF POINTS, WITH AUTHORITIES.

1. The company was required to operate its road as a continuous line, and, therefore, to run its fast mail train to its station in Cairo. *Union Pacific R. R. Co. v. Hall*, 91 U. S. 343; *United States v. Pacific R. R. Co.* 4 Dill., 478; *The People v. L. & N. R. R. Co.*, 120 Ill. 48; *The People v. O. & M. R'y. Co.*, 120 Ill. 200; *C. & A. R. R. Co. v. Suffern*, 129 Ill. 274; *State v. Hartford and New Haven R. R. Co.*, 29 Conn. 538; *The People v. Albany and Vermont R. R. Co.*, 24 N. Y. 261; *Brownell v. Old Colony R. R. Co.*, Supreme Judicial Court of Massachusetts, decided June 19, 1895, 41 Northeastern Reporter, 107.

2. Between this case and that of the *Union Pacific R. R. Co. v. Hall*, 91 U. S. 343, there is a striking similarity. The distance between Omaha and Council Bluffs, over the Missouri River bridge, represents the 3 1-4 miles between Bridge Junction and the station in Cairo. Omaha corresponds to Bridge Junction and Council Bluffs, or the station therein, to the station in Cairo. Council Bluffs and the station in Cairo are, respectively, the eastern and southern termini of the two roads. This court held that the bridge over the Missouri River was part of the railroad—part of the main line. In the case at bar, the track or tracks between Bridge Junction and the station in Cairo is conceded to be that much of the company's main line as fixed by the charter and as laid out and used and operated for 34 years before suit, and that the station, or a point 950 feet south of it, is the southern terminus of the road. This court held that the Union Pacific company was required to operate its

road, including the bridge, as one connected and continuous line, and that it should run all of its trains eastward from Omaha to Council Bluffs and that running a train between Omaha and Council Bluffs to connect with trains at those places was not operating the road as a continuous line and not a compliance with law.—Here, therefore, are three cases clearly holding, in effect, that plaintiff in error may not stop its trains at Bridge Junction and use another train for the service between Bridge Junction and the station in Cairo, and thus "*break the road into two lines*," namely, the case in *91 U. S. 343*, the case at bar, 143 Ill. 434, and *Louisville and Nashville R. R. Co. v. The People*, 120 Ill. 48. It is true that the decision of this court that the Union Pacific company was required to operate its road as a continuous line was based largely on statutes of congress; but its holding as to what was or was not an operation of the road as a continuous line is of general application. In Illinois, *mandamus* lies for the enforcement of common law duties as well as statutory.

In the Union Pacific case, the order of the circuit court for the peremptory writ of mandamus and which order or judgment this court affirmed, "commanded the railroad company to operate the whole of their road from Council Bluffs westward (including that portion thereof between Council Bluffs and Omaha and constructed over and across their bridge spanning the Missouri River) as one continuous line for all purposes of communication, travel, and transportation; and especially commanding them to start from Council Bluffs their regular through freight and passenger trains westward bound, and to run their eastern-bound trains of

both descriptions through and over said bridge to Council Bluffs under one uniform time schedule with the remainder of their road, and to desist and refrain wholly from operating said last-mentioned portion of said road as an independant and separate line, and from causing freight or passengers bound westward or eastward to be transferred at Omaha."

In the opinion of the court we find the following language, quite as applicable to the case at bar as to the case in which it was used: "Holding then, as we do, that the legal terminus of the railroad is fixed by law on the Iowa shore of the river, and that the bridge is a part of the railroad, there can be no doubt that the company is under obligation to operate and run the whole road, including the bridge, as one connected and continuous line. This is a duty expressly imposed by the acts of 1862 and 1864, and recognized by that of 1871. What this means is not difficult to understand. It is a requisition made for the convenience of the public. An arrangement, such as the company has made, by which freights and passengers destined for or beyond the eastern terminus are stopped two or three miles from it and transferred to another train and again transferred at the terminus, or by which freight and passengers going west from the eastern end of the line must be transferred at Omaha, *breaks the road into two lines*, and plainly is inconsistent with continuous operation of it as a whole. If not, the injunction of the statute has no meaning. The *mandamus* awarded in the case, therefore, imposes no duty beyond what the law requires."

3. Of the two independent grounds on which the judgment is based, one is the one just mentioned, broad enough to sustain the judgment, namely, the operation of the road as a continuous line; and, therefore, this Court has no jurisdiction. *Brown v. Atwell*, 92 U. S. 327; *Hale v. Akers*, 132 U. S. 554; *Johnson v. Risk*, 137 U. S. 300; *Beaton v. Benton*, 135 U. S. 234, and cases therein quoted from; *Beaupre v. Noyes*, 138 U.S. 397, 402; *Bolles v. Eustis*, 150 U. S. 361; *Connecticut v. Woodruff*, 153 U. S. 689; *Winter v. Montgomery*, 156 U. S. 385.

4. But it is not necessary that this Court should concur with the State court as to the sufficiency of the ground, not involving a Federal question, on which the latter's judgment is based. If the State court did in fact base its decision on some ground not within the jurisdiction of this Court, although deemed by this Court an insufficient or erroneous ground, it will not take jurisdiction even if the decision is also rested on some other ground within this Court's jurisdiction. *Klinger v. Missouri*, 13 Wall. 257; *Murdock v. Memphis*, 20 Wall. 590; *De Saussure v. Gaillard*, 127 U. S. 216; *Johnson v. Risk*, 137 U. S. 300, and *Eustis v. Bolles*, 150 U. S. 361.

5. The question must relate to "*the validity of a statute*"; and hence, the judgment of the State court is not examinable here unless it clearly appears to be rested solely on the *validity* of said section 88. *Railroad Co. v. Rock*, 4 Wall. 177; *Water Co. v. Easton*, 121 U. S. 388; *New Orleans Waterworks Co. v. Louisiana Sugar Refining Co.*, 125 U. S. 18; *St. Paul, M. & M. R'y Co. v. Todd Co.*, 142 U. S. 282; *Winona and St. P. R. R. Co v Town of Plainview*, 143 U. S. 371.

6. If the judgment of the State court is based on general principles of law or jurisprudence, or on some statute whose validity is not questioned, this court has no jurisdiction although the validity of some other statute may have been in issue. *West Tennessee Bank v. Citizens' Bank*, 13 Wall. 432; S. C., 14 Wall. 9, 10, 12, 15 and 23; *Stevenson v. Williams*, 19 Wall. 572; *N. O. W. Co. v. L. S. R. Co.*, 125 U. S. 18; *Kreiger v. Shelby R. R. Co.*, 125 U. S. 39.

The State court says: "The appellant company is required by its charter to operate its road as a continuous line to the point selected and used and maintained by it as the southern terminus of its road. It cannot make Mounds Junction, or Bridge Junction, the southern terminus. It has no right to treat the legal and actual terminus at the corner of Second and Levee streets in Cairo as though its station in that city was on a side or spur track, to be visited only with such cars or trains as it sees fit to send there. The requirement of the law is not met by the use of short trains for transfer purposes." Opinion of Court, pp. 49, 50 and 51, hereof.

7. Had the State court held section 88 unconstitutional, its judgment or the relief granted, would not have been different; and hence its decision that the section is constitutional cannot be said to give effect to it in such sense as to give this court jurisdiction.

8. The construction of the statute, and not its validity, was in issue in the State courts. The certificate of the presiding judge is not of controlling force. This Court, therefore, has no jurisdiction. *Commercial Bank of Cincinnati v. Buckingham*, 5 How. 317; *Baltimore*

and Potomac R. R. Co. v. Hopkins, 130 U. S. 210; *L., N. O. & T. R'y Co. v. Mississippi*, 133 U. S. 587; *Glenn v. Garth*, 147 U. S. 360; *Powell v. Supervisors of Brunswick Co.*, 150 U. S. 433; *Baltimore Traction Co. v. Baltimore Belt R. R. Co.*, 151 U. S. 137; *Sayward v. Denny*, 158 U. S. 180; *Linford v. Ellison*, 155 U. S. 503; *Lloyd v. Matthews*, 155 U. S. 222; *United States v. Lynch*, 137 U. S. 280-285.

9. The statute is a police regulation, and applies to all regular passenger trains *while in the State*; and the reasons for its enactment will not admit of difference between trains starting and stopping, within the State, *and* trains starting within or without the State and going beyond it.

10. Requiring all regular passenger trains to be stopped at stations in county seats, is a reasonable regulation of railroad companies. It is a proper exercise of the police power of the State; and if in any case it interferes with interstate commerce, such interference is remote and incidental. *Sherlock v. Alling*, 93 U. S. 99; *Smith v. Alabama*, 124 U. S. 565; *Stone v. Farmers' Loan and Trust Co.*, 116 U. S. 307; *L. & N. R. R. Co. v. Mississippi*, 133 U. S. 587; *Charlotte, C. & A. R. R. Co. v. Gibbes*, 142 U. S. 386; *Budd v. New York*, 143 U. S. 517; *Minneapolis and St. L. R. R. Co. v. Emmons*, 149 U. S. 364; *N. Y. & N. E. R. R. Co. v. Town of Bristol*, 151 U. S. 556; *Lawton v. Steele*, 152 U. S. 133; *Plumley v. Massachusetts*, 155 U. S. 461; *Kidd v. Pearson*, 128 U. S. 1; *Commonwealth v. Eastern R. R. Co.*, 103 Mass. 254.

11. Conceding that congress may rightfully legislate on this subject, the State enactment will stand un-

til superceded by a Federal enactment. *Chicago and Northwestern R. R. Co. v. Fuller*, 84 U. S. (17 Wall.) 560; *Cardwell v. Bridge Co.*, 113 U. S. 210; *Gulf, C. & F. R'y Co. v. Hefly et al.*, 158 U. S. 98, and cases therein cited.

12. No arrangement the company could make with the postal authorities for carrying the mail could annul the State Statute. In *Stone v. Farmers' Loan and Trust Co.* (*Mobile and Ohio Railroad Co.*), 116 U. S. 307, sections 4 and 6, of the act of congress of Sept. 20, 1850, were, without avail, relied on as reasons for exempting the company from the operation of the Mississippi statute in regard to rates.

13. The company built its road to Second street and established its station thereon, on block one (1), and operated its road to that point and ran all of its passenger trains to that station, for 34 years before this action was commenced. Its election and user, to say nothing of its charter duties, have now all the force of a statutory enactment, which may be enforced by mandamus.—There is no question of financial inability. —The duty must be reasonably clear, as a basis for the writ, but it may or may not be a statutory duty. The case of the *Northern Pacific R. R. Co. v. Territory of Washington*, 142 U. S. 492, which may be cited by plaintiff in error, is based on the absence of statutory duty, and also on the ground that the public interests, as they existed at the time of final judgment, required the writ to be denied.

APR 9 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

No. 217.

ILLINOIS CENTRAL RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. W. N. BUTLER, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Supplemental Argument of John M. Lansden, for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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THE INTERSTATE-COMMERCE CLAUSE.

In one of the briefs of the other side is found a somewhat full discussion of this clause of the Constitution as an original question. Its presentation is learned and interesting, but we had supposed that at this day the decisions of this Court were sufficiently numerous and comprehensive to furnish, as near as may be, a fairly safe rule for the deter-

mination of a case like this. New facts and new conditions do not always make new cases. Human laws often, like moral laws, have a wonderfully wide operation. Close examinations often remove supposed differences.

To some persons this clause of the Constitution overshadows everything in the instrument. With them it obliterates State lines—lines incapable of obliteration. They inhere in the Federal Government itself, for in them it had its origin and by them it exists. Any other view is one-sided, and hence deceptive. In this view there is no such things as States, and the Federal Government as the sole authority may take these companies and roads in hand and regulate them not only *among* the States, but *in* the States, fix absolutely their schedules and time-tables, the stops and starts and speed and equipment of their trains in every mile they run and in every State they go. In short, this view makes one great State of the forty-four, for the number of companies or roads not engaged in interstate commerce are daily growing less.

It is true that the power to regulate commerce among the States is vested exclusively in the Federal Government, but it is also true that the States may enact legislation that may and will affect and influence such commerce, provided it stops short of a regulation thereof. This is now the law—as much so as if it had been made a part of said clause at the time it was penned and adopted.

The law could scarcely be otherwise. The vehicles, instrumentalities, and other agencies of interstate commerce are almost always of State origin. The Federal Government has incorporated very few railroad companies; and yet it is urged that these companies, whose existence and life are from and dependent on the States, may reach out beyond State lines and, sheltering under this clause, declare themselves relieved from State legislation and State control.

And so in the case at bar, it is claimed for this railroad company that, having acquired roads or lines in other States

northward and southward, it is no longer, under the operation of this clause of the Constitution, an Illinois corporation, but a corporation having a national origin or the equivalent thereof, whose termini are in western Iowa and southern Louisiana, and which is thereby relieved of all and every kind of State supervision. The metamorphosis is thus seen to be complete.

This is the view that these companies always present and urge, except when the Federal authority moves upon them under the law recently enacted in pursuance of this clause of the Constitution; then some other shelter is diligently sought for. If State action has been found to be to them a kind of Scylla, the Federal action may be found to be their Charybdis, swallowing up all that they have and are. If the railroad companies of this country ever find a common grave, it will be in this clause of the Federal Constitution, and their pæans of praise now sung so heartily and with such accord over these few Federal words will be remembered more as in the nature of an estoppel than as a real and true harmony.

THE OBJECTIONS TO THE STATUTE.

The opinion of the State court shows that the validity of the statute was not there attacked so far as it might be applied to trains that *pass* stations in county-seats. Now, however, we find in one of the two briefs of plaintiff in error that this Court is urged to hold the act wholly unconstitutional. The request is—

"That the opinion and judgment of the supreme court of Illinois in this case be overruled, and that the statute of said State approved May 27th, 1879, be declared void in so far as it requires all regular passenger and every passenger train to stop a sufficient length of time to receive and let off passengers at every county-seat."

The prayer is widely broadened on the theory, no doubt, that it is safest and therefore best to ask for too much than too little.

But what was not sought for nor asked in the court below cannot now be asked for, or, if asked for, cannot now be given. The particular "interpretation" of the statute was the only thing complained of; but now it is the statute itself, regardless of particular interpretations.

THE LOSS OF TIME.

The objection is that there is a loss of time in going to the station and back, said to be a round-trip distance of seven miles. If there is or can be any other objection than this, it has so far not been stated. This, therefore, is the sum and substance of the company's contention.

This loss of time is greatly magnified in both briefs. In one it is said that had the company been permitted, it would have proven that in running trains down to the station a street two miles long has to be traversed and twenty-one cross-streets crossed. This is well nigh imaginary. Of the two miles of road on Ohio Levee embankment about one-half of a mile is a street, and the other mile and a half, while once a paper street, was, 15 years ago or more, vacated by the city and turned over to this company; and as for cross-streets, all of them end at Ohio Levee street, which is on Ohio Levee embankment, and even these so-called cross-streets are only six in number, namely, 4th, 6th, 8th, 10th, 12th, and 14th streets.

Again, the time-tables are folders of the company, show that the time for each train to run from Bridge Junction to the station and from the latter to the former is 15 minutes for some trains, 14 for some, 13 for some, and 12 for others, and the run is believed to be made almost always in less than 12 minutes. (See Record, page 48.) In this brief the loss of time is said to be 40 to 50 minutes.

The other brief contains a comprehensive and striking statement of the results that would flow from the application of such a statute as this to the company's trains on every part of its road. (See page 53.) It is there said that the road extends into or through 107 counties, some in one State and some in another, and that, allowing 10 minutes for loss of time in slowing up, stopping, and getting under way again, 18 hours of time would be lost, and that a train running from Chicago to New Orleans runs through or across 48 counties, and that the corresponding loss of time or delay would be 8 hours.

This statement has been made with some care, we suppose, but it very wrongly assumes that the trains on their way from Chicago to New Orleans run through a county-seat in each county. This is so wide of the mark that it may be called a kind of random shot. It is 365 miles from Chicago to Cairo, and the road runs through 18 or 20 counties, but only through 4 county-seats, exclusive of Chicago and Cairo, and the shortest distance between any two of these county-seats, including both Chicago and Cairo, is 46 miles. This part of the road may, however, be exceptionally and fortunately free from county-seat towns.

But is not the 10 minutes' allowance rather liberal, considering the exigencies of interstate commerce? The writer has tested this a time or two and concludes that the 10 minutes might well be divided by 3, 4, or 5 for correct results, according to the number of passengers, amount of baggage, and other necessary elements. There are over 70 stations from Chicago to Cairo, and a train that stops at all of them runs the whole distance of 365 miles in about 13½ hours; and if 10 minutes' time is lost at each stop we have a grand total loss of more than 700 minutes, or about 12 hours. (See schedule, page 48 of Record.)

We respectfully suggest that counsel's estimate of the loss of time greatly needs revision. Many of their arguments

are stronger than this one, but the stronger ones must share in its weakness, and hence lose some of their own strength.

This whole matter of the loss of time seems to exist more in argument than in fact, for the record shows that the vestibule trains of the company run from Chicago to New Orleans in less time than the so-called fast mail train, notwithstanding they go to the station in Cairo and there stop 20 minutes.

TRANSFER TRAINS—THE CONNECTING ROAD.

We find on page 52 of one of the briefs a strikingly apt and strong statement:

"The extent to which she has or will exercise the power in no way affects the existence or residence of such power." And again: "The question is, Where does the power reside? Not how far it will probably be abused."

If the company may stop one, then it may stop all of its regular passenger trains at Bridge Junction, without the city limits; and if for one such train it may use a short transfer train to run over the short *connecting* road between that junction and the station, it may use such transfer train or trains to do all the business for all of the trains that come on the main line to Bridge Junction. It is a question of power, for at the bottom of it are the interests of interstate commerce, which can know no distinction between trains that carry interstate passengers; and all the company's trains carry them.

It is a question of power, it is true, but that power being unlimited, if it exists at all, it may in the hands of private persons or corporations be so subject to abuse that we may well doubt whether such a power exists.

The argument urged upon us reduces Cairo and all it represents to these transfer trains for its whole train service so far as this company is concerned. If this *connecting* road

of 3½ miles may be rightfully and exclusively operated by these transfer trains, what name must be given to or how shall we describe that process of reasoning by which such amazing results are accomplished.

Judge Dillon, to whom we listened in the court-room a few days ago, used this language in the case of The United States *vs.* The Union Pacific Railroad Company, 4 Dill., 493, and his judgment in the cause was affirmed in 91 U. S., 343:

"If we are right in the position that the eastern terminus of the road of respondent is on the Iowa shore, then, inasmuch as the bridge act of 1871, upon which respondent so strongly relies, declares that such terminus remains unchanged notwithstanding that act, the conclusion necessarily follows that the respondent must operate its trains over the bridge under its control as part of a continuous line of road and operate them over its entire line of road from terminus to terminus. Such a duty has been enforced by a mandamus without such specific legislation as Congress has provided in this behalf by the act of March 3, 1873. * * * (The State *vs.* Hartford, &c., R. R. Co., 29 Conn., 538; Rex *vs.* Severn and Wye Railway Co., 2 Barn. and Ald., 646.)

"Suppose the respondent should habitually stop its regular trains two miles west of Omaha and refuse to run them eastward of that point or only run 'transfer trains,' is there any doubt, under the legislation of Congress, that it could be compelled to operate and run its regular trains into the city? And so in the case before us, if the bridge on which its track is extended is to be considered a part of its road within the meaning of the act of Congress requiring it to operate its whole line without any break in its continuity. In this view the *transfer device* of the company putting passengers and shippers of freight to unnecessary delay, inconvenience, and expense is a violation of the duties which the company owes to the public."

It is no answer to say that this language was used in connection with a statute requiring the railroad to be operated as a continuous line, as we have elsewhere shown.

IN THE INTERESTS OF INTERSTATE COMMERCE.

The decision of the State court was in furtherance of interstate commerce. We desire to emphasize this statement.

Cairo is a small city, but it is the largest on the company's line from Chicago to New Orleans. Its business, its railroad business especially, is 5 to 10 times greater than that of any other city, town, or place on the company's road between those two cities. Seven railroads terminate there, three in Illinois, two in Kentucky, and two in Missouri. All of their passenger trains, with the exception in question, come to within 300 feet of each other at the only [redacted] passenger stations that are now in or have ever been in the city, namely, the two stations on Second street, so close together that they may well be said to adjoin each other. The roads in Kentucky are the Chicago, St. Louis and New Orleans, under lease to the Central, and the Mobile and Ohio. Those in Illinois are the Illinois Central, the Cairo Division of what is known as the Big Four road, and the St. Louis and Cairo road, under lease to the Mobile and Ohio, and in Missouri the Cotton Belt or St. Louis Southwestern and the Iron Mountain road, both coming in at Bird's point, on the Mississippi river opposite Cairo. All of the trains, except the Central's, are brought over the river by large ferry-boats. These two Missouri roads lead out into the great southwest country and are the only roads between St. Louis and Memphis, three to four hundred miles apart, by which one can go direct to the southwest from Cairo.

More than this, opposite blocks 2 and 3, just above block 1, on which this station has existed for 40 years, is the great Ohio River paved wharf, at which every steamboat coming down the Mississippi or down the Ohio, or coming from the Mississippi below, lands and discharges and receives passen-

gers and freight. None of them, from any direction, ever pass without landing, and there is on neither river any other wharf or landing place for vessels than this one which is within a stone's throw of these stations, from which travelers may go in any direction the compass points. From these stations they go direct to the vessels, and thence to all river points south, northwest, and northeast. If there is a central point anywhere in this country, it is at Cairo, where these rivers and railroads meet.

We conclude, therefore, that the desire of this company to run any of its trains by or beyond this station without stopping is, beyond all question, not because it seeks to further the interests of interstate commerce—and this brings me to my next point, which may probably afford some explanation of this strange insistence.

UNJUST DISCRIMINATION.

Plaintiff in error unjustly discriminates in favor of passengers coming by its trains to Bridge Junction and desiring to go on southward over *its road* to New Orleans and other Southern points, while other interstate passengers on the same train or trains, but going over other roads from Cairo or by the rivers, are required to get out of their train and go aboard the transfer train for carriage 3½ miles to the company's station in the city, there to make another transfer. If any class of interstate passengers are to suffer delay, should it not be the few going in the one direction and not the many going in many directions? All these seven roads are interstate roads and the rivers pre-eminently interstate rivers, and yet we are asked to discriminate in favor of this company's passengers and against all others who may desire to go from Cairo by other roads or by the rivers. All other interstate passengers must undergo that delay that has been figured into such length by counsel in arguing in behalf of those of its passengers who go southward and

northward by its own line. If there is anything that has become well embedded in the railroad law of the country, either National or State, it is that unjust discrimination must not be countenanced. This operation of the two fast mail and passenger trains, and at times of others of its regular passenger trains, is not in furtherance of interstate commerce, but in hindrance thereof.

This plea, when the situation is understood, has not, we respectfully submit, the merit even of speciousness. To allow it for any reason would be to allow the company to establish its chief station at Bridge Junction without the city, to make its road's terminus there, and to make, for all purposes, the bridge line the main line of its road, regardless of the obligations of its charter; for by acquiring its southern line it has, it claims, escaped from the irritating trammels of its Illinois act of incorporation; and the only question any one can raise or litigate, with any show of success, is whether the company is furnishing the people of Cairo with reasonable railroad facilities by means of the transfer trains running between the junction and the "old station" in the city. This station is uniformly spoken of as the old station in the briefs of counsel. It is, indeed, well nigh fifty years old, and therefore it may be called old, but it is not old in comparison with any other station, for the company never had any other passenger station of any kind in the city or county, and has not now.

ASSUMING NEW AND THEREBY GETTING RID OF OLD OBLIGATIONS.

It will not be claimed that had the bridge not been built the company could have established a station out of and near the city and used transfer trains on the connecting road between the new and the old stations, three and a half miles apart. If it could not do this, it was because the charter and the company's own election and user had permanently estab-

lished its terminus and station at Ohio Levee and Second streets, *in the city*, and that it was required to operate its road as a continuous line and to that terminus and station.

How, therefore, has this long and rightfully established condition of things been changed or how is it to be changed? It is in this way: The company has acquired a road leading south from Cairo, and through the instrumentality of the company owning that road has built a bridge over the river, so that its own and its leased line form a continuous line over the bridge from Chicago to New Orleans, and the company now, by means of this new line, is engaged in interstate commerce, and therefore under this clause of the Federal instrument is released or absolved from the obligations imposed by its own Illinois charter and assumed by it in and by its own election and user.

We respectfully submit that the company's charter obligations cannot thus be put on and put off at the option of the company as times and circumstances change. Whatever may be the imperious demands of interstate commerce, they possess no such absolving power as this. These rights of the public, as well the general public as the local public at Cairo, to have this road operated as it was intended to be operated and as it was in fact operated for thirty-six years, are prior to and stand ahead of these newly assumed obligations in favor of the company's own long-haul passengers, but against all other passengers, local and interstate.

COUNTY-SEATS.

They are the central towns of the counties. They are the most important places in the counties. The courts of justice sit there. Titles are recorded there. Rights to marry are procured there. Taxes are paid there. The officers of the law reside there. From there criminals are apprehended and are there taken, kept, and punished. In a word, the

county is seated there, and with it there should be full, free, and every reasonable means of communication.

This law of Illinois is very reasonable. This is the only test, as suggested the other day by Mr. Justice White to Judge Dillon. It is the only law on the statute books of the State that requires passenger trains to be stopped anywhere for the *convenience* of the people; and it must be a rare thing, indeed, that any company will be found to object to it. The law will not be set aside and annulled because it may now and then prevent an interstate train from passing a county-seat station without stopping. Besides, few laws operate favorably or agreeably to all persons and corporations, in all cases or instances. The general good is the criterion.

PROPOSITIONS OF LAW APPLICABLE TO THIS CASE.

The plaintiff in error is an Illinois corporation and cannot in Illinois be anything else, either more or less.

Its acquisitions of lines in other States have not relieved it of any of its charter duties or obligations in Illinois.

The building of the bridge does not now enable it to change the location of its station and the operation of its trains in a way or manner not allowed to it before it was built.

If, on account of interstate passengers, it may run one or two trains over the bridge and not to the station, it may run them all the same way, all of them carrying interstate passengers.

Thus running the trains makes the road from Bridge Junction to the station a mere *connecting* line, makes those points transfer points only, and the trains run between them transfer trains only. This "*breaks the road into two lines.*"

The interests of interstate passengers or interstate commerce require the trains to be run to the station and the extra transfer avoided. Running trains over the bridge and not to the station is in the exclusive interest of particular interstate passengers going southward or northward over

the company's road and against the interest of all other interstate passengers it brings to Cairo to go from thence by other roads or by the rivers, in all directions.

The statute in question is a reasonable regulation, applicable alike to all roads in Illinois, whether of State or interstate character. If its operation as a law is generally favorable, it is not material that in particular cases it may operate unfavorably.

If the State may not enact a law like this, then it follows that inasmuch as Congress has taken no action in the matter, plaintiff in error has an absolute and unlimited discretion as to where, *if anywhere*, it will stop its so-called interstate trains in the State for the reception and discharge of passengers.

The State created this company and road for the *convenience* of the people, and hence it may make any *reasonable* regulation in regard to the places or points at which it shall stop any one or more or all of its regular passenger trains, while within its boundaries, for the reception and discharge of passengers. Travel was one of the prime objects, and where travelers may be taken on and let off, while left largely to the discretion of the company, is, nevertheless, within the police control of the State; and when a question of interstate commerce arises the only question this Court asks or has ever asked is, *Is the regulation a reasonable one?* or, rather, *Does the regulation clearly appear to be unreasonable?*

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